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SHELFORD'S

LAW OF

Joint Stock Companies,

CONTAINING

A DIGEST OF CASE LAW;

THE COMPANIES ACTS, 1862, 1867, AND OTHER ACTS RELATING TO JOINT STOCK COMPANIES;

The Orders made under those Acts,

TO REGULATE PROCEEDINGS IN THE COURT OF CHANCERY AND COUNTY COURTS;

AND

NOTES OF ALL CASES INTERPRETING THE ABOVE ACTS AND ORDERS.

MIDDLE TEMPLE

SECOND EDITION,

Much enlarged, and bringing the Statutes and Cases down to the date of publication.

BY

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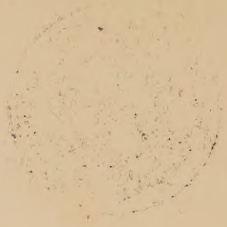

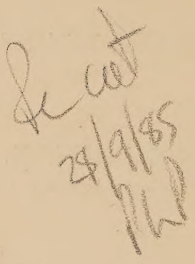

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PREFACE.

The present work is nominally a second edition of Mr. Shelford's treatise, I have therefore thought it right to adhere strictly to its original subject-matter, and some portions are given somewhat more fully than they would have been had I been writing altogether independently; but its form and arrangement have been considerably changed.

The book treats of companies incorporated by registration, unincorporated companies so far as they differ from ordinary partnerships, and the winding-up of all companies other than railway companies incorporated by Act of Parliament.

Since the former edition was published, nearly the whole of the case-law on the subject has been considerably modified or developed; and, in addition to the large number of decisions which have been given in interpretation of the Companies Act, 1862, an important statute amending that Act has been passed.

The first part of this work consists of a digest of the cases bearing on that portion of the subject which is chiefly founded on principles of law and equity, independent of statute, arranged as notes

to short general statements or propositions. The statements do not profess to be more than a guide to the practitioner with a view to enable him to find readily the cases on any particular part of the law. In order that every case should be a simple deduction from such general statements, still more that the statements should not go beyond the reported cases, they would probably in a few instances require some limitation or extension. The attempt rigidly to adhere to those conditions would have hampered freedom of expression, and might have injured symmetry of arrangement. My aim has been to give a short and correct account of each case; and I have endeavoured to save the reader the unnecessary trouble so often thrown upon him by text writers, of looking out cases useless to him which the authors have referred to from some loose analogy, and without anything to notify their exact bearing. I have tried to avoid the pitfall of over theorising, but I have not hesitated to comment freely on any decisions I thought of doubtful authority or productive of practical injustice and opposed to public policy.

The second part of the work consists of Acts of Parliament and Orders of Court, with the cases, interpreting the different sections and rules, appended to them, in the mode adopted by Mr. Shelford and now common in legal treatises.

The latter mode of arrangement for subjects to which it is applicable has the advantage that it

obviates the necessity of printing much matter twice over, as in any event a book of this nature ought to contain the statutes and orders unmutilated. And however complex may be the arrangement which the legislature has adopted, a copious Index and clear Table of Contents will better enable the practical lawyer to find what he may require, than a statement of the same matter in an order that seems to the author more natural or less involved.

The fact that there are other works on the same subject has not deterred me from entering upon my task. It might be unnecessary to apologize for the publication of a second edition of a book which was originally issued six years ago. But the appearance, in 1867, of the second edition of Mr. Lindley's work on the "Law of Partnership," a treatise showing, perhaps, more thought, research and power than any other modern law text book, and which has already contributed to the development of this branch of our law, has made me somewhat diffident of success. Mr. Lindley's book, however, is of a larger scope; he has approached the subject from a different point of view; he has handled it in a broader manner; and I may hope that for every-day use my own work may have some advantages in addition to compactness and lateness of date of publication. I have not consciously borrowed ideas from others. I have in all cases gone to the original sources of information, and have devised my own scheme of arrangement; but

it is impossible to read an able book without being impregnated with the thoughts of the writer, and it is, I think, one of an author's greatest honours that his work should contribute to form the minds of his successors.

My friend, Mr. Latham, had intended to edit this work; but, on his going to India, I took it off his hands, and much delay has consequently ensued.

Mr. Latham had collected materials in the form of a rough analysis of cases; but it will be obvious to all legal readers how difficult it is to work upon another's materials. I have, however, made what use I could of them. Mr. Latham had also written a small portion of his projected treatise. I have incorporated some of this, which will be found in the first thirty pages of the present volume.

Mr. E. B. Michell, of Lincoln's Inn, has been kind enough to prepare the Index, for which I tender him my best thanks.

DAVID PITCAIRN.

7, New Square,
Lincoln's Inn.

Dec. 1869.

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ADDENDA.

Page 8, *line 5 from bottom, after c.* 46, insert—so far as it relates to the constitution of companies and not the law of banking.

18, *for* Balard *read* Batard.

21, *after line* 10, insert—A company, the object of which was to erect and maintain a pier in Wales, had its registered office in London, where its main business was carried on. It dwelt in London within the meaning of the County Court Acts. *Aberystwith Pier Co.* v. *Cooper*, 12 Jur., N. S. 995.

27, *after line* 17, insert—Provisional certificates were issued for new shares, which provided that if an instalment of capital and premium were not paid before a certain day the amount already paid and all rights in respect of the certificates would be forfeited. A person to whom such certificates had been issued had transferred his shares without paying the instalments: he was not made a contributory. *Asiatic Banking Co., e.p. Collum*, 21 L. T. 350.

31, *European Central R. Co., e.p. Gustard*, is now reported 38 L. J., Ch. 610; L. R., 8 Eq. 438.

32, *after line* 4 insert—*The Rolling Stock of Ireland Co., Shackleford's Case*, L. R., 1 Ch. 567, was decided on this principle.

32, *par.* 9 (2). *Aldborough Hotel Co., e.p. Simpson*, 38 L. J., Ch. 88, was a case where it was held there was a contract to take shares on condition the applicant was given a building contract, though such condition was not expressed on the application for shares.

33, *par.* 10 (1). E. had signed the memorandum of association of a company; he was made a contributory, though all the shares were allotted to others, but they were not finally all taken up. *London, Hamburgh, and Continental Exchange Bank, Evan's Case*, L. R., 2 Ch. 427; 36 L. J., Ch. 501.

34, *China Steam Ship Co., Drummond's Case*, has been reversed 21 L. T. 317; L. R., 4 Ch. 773. *Heyford Hotel Co., Pell's Case*, is now reported L. R., 8 Eq. 222; 38 L. J., Ch. 504; but it has been reversed 18 W. R. 31; 21 L. T. 412.

34, *after line* 4, insert—S. subscribed the memorandum of association of a company for twenty shares. The articles of association contained a power to accept surrenders of shares. S. requested to have his shares cancelled, and a deposit he had paid on them returned. This was acceded to by the directors. His name had never been placed on the register of shareholders. On the winding-up of the company he was not made a contributory. *Natal Investment Co., Snell's Case*, 18 W. R. 30; 21 L. T. 445.

39, *for* Jarwood *read* Garwood.

Page 41, *after last line*, insert—*Anglo-Australian Insurance Co.* v. *British Provident Assurance Co.*, 8 Jur. 628.

43, *in foot-note on nature of debentures*, insert—By the articles of association of a company a sum of money was to be paid a promoter, he indemnifying the directors against certain costs and charges. Seventeen debentures were issued to the promoter in payment of the stipulated sum. He did not pay all the costs and charges; they were proved to the amount of 200*l.* in the winding-up of the company. The company was allowed to set off one-seventeenth part of the sum so proved against the amount due on each debenture. *South Blackpool Hotel Co., e.p. James*, L. R., 8 Eq. 225; 38 L. J., Ch. 616.

44, *at end of note on nature of debentures*, insert—A company was not allowed to set off calls made upon a member to whom debentures had been issued as against the holder of such debentures, they having acknowledged his title. *Higgs* v. *Northern Assam Tea Co.*, 21 L. T. 336; 17 W. R. 1125; L. R., 4 Ex. 387; 38 L. J., Ex. 233.

44, *Blakeley Ordnance Co., e.p. Metropolitan and Provincial Bank*, is now reported L. R., 8 Eq. 244.

44, *Blakeley Ordnance Co., Holland's Case*, has been affirmed L. J. Giffard, Nov. 19, 1869.

45, *Agriculturists Cattle Insurance Co., Dixon's Case*, is now reported 38 L. J., Ch. 567; but it has been reversed on appeal, L. J. Giffard considering that there was not a real question in dispute, 18 W. R. 77; 21 L. T. 446.

47, *after e.p. Cropper*, insert—A company was not restrained from applying to a foreign government for further powers. *Bill* v. *Sierra Nevada Co.*, 1 D. F. & J. 177.

72, *Forfeiture of shares.* By the articles of association of a limited company it was provided that no contract entered into by the directors, to which the assent of the company in general meeting should be given, should be afterwards impeached on any ground whatsoever. A contract, one of the terms of which was that shares should be cancelled, and which was duly sanctioned by a meeting, could not be impeached. *Marshall* v. *Glamorgan Iron Co.*, L. R., 7 Eq. 129; 38 L. J., Ch. 69.

76, *South of Ireland Colliery Co.* v. *Waddle* has been affirmed by the Court of Exchequer Chamber, L. R., 4 C. P. 416; 38 L. J., C. P. 388.

77, *for* King *read* Haigh.

79, The appointment of liquidators by meetings of shareholders has been held invalid for want of proper notice. *Bridport Old Brewery Co.*, L. R., 2 Ch. 194; *Stearic Acid Co.*, 32 L. J., Ch. 784.

85, *London and Northern Assurance Corp., e.p. Stace*, is now reported L. R., 4 Ch. 682.

86, *after e.p. Longworth's Executors*, insert—*M'Dougall* v. *Jersey Hotel Co.*, 34 L. J., Ch. 28; 2 H. & M. 528.

87, *par.* 21 (4), Compare *Natal Investment Co*, *Snell's Case*, 18 W. R. 30.

88, *Re Cork and Youghall R. Co.* is reported L. R., 4 Ch. 748.

91, *Gray* v. *Lewis* is reported L. R., 8 Eq. 526.

Page 98, 99, *Turquand* v. *Marshall* is now reported 38 L. J., Ch. 639.

99, *Mercantile Trading Co., Stringer's Case,* is reported 38 L. J., Ch. 698; L. R., 4 Ch. 475.

99, *Joint Stock Discount Co.* v. *Brown* is now reported L. R., 8 Eq. 381.

99, *line* 5. O. agreed with a promoter to become director on condition that fifty paid up shares were given him; the promoters gave him that number of shares out of the profits of a transaction with the company. O. could be made to account for the value of the shares under Companies Act, 1862, s. 165, though the whole transaction might have been set aside. *Masons' Hall Tavern Co., Orgill's Case,* 21 L. T. 221.

99, A director had been present at a meeting where it was resolved to do an act *ultra vires;* he afterwards protested by letter against doing the intended act; he subsequently attended board meetings, and took no further step to prevent the matter *ultra vires* being done. He was liable equally with the other directors. *Joint Stock Discount Co.* v. *Brown,* L. R., 8 Eq. 381.

A director who had concurred in carrying out a matter *ultra vires,* which had been resolved upon before he became a director, was liable. *Ib.*

Another director had not been present at any of the meetings at which the matter was discussed; a bill to make the directors recoup the company was dismissed as against him, but without costs. *Ib.*

100, *Overend, Gurney & Co.* v. *Gurney* is reported L. R., 4 Ch. 701.

104, *for* Husley *read* Horsley.

106, *par.* 28 (1). A. was an officer of a company, formed for the purpose of carrying on the business of stockbroking, and in the course of business bought some stock for a customer, and signed the bought and sold notes; he was liable to the penalty imposed by 57 Geo. 3, c. 60, s. 2, for acting as broker without a licence. *Scott* v. *Cousins,* L. R., 4 Ex. 177.

115, *London and Marine Insurance Association, Smith's Case,* is reported 38 L. J., Ch. 681.

117, Where there was a complicated question, the court refused to rectify the register. *Heaton Steel Co., e.p. Simpson,* V.-C. Stuart, 19 Nov., 1869.

120, *Joint Stock Discount Co., e.p. Fyfe,* is reported 38 L. J., Ch. 725; L. R., 4 Ch. 768. See also *e.p. Hills, Ib.* 769 (n).

123, *London and Marine Insurance Association, Smith's Case,* is reported 38 L. J., Ch. 681.

123, *London and Northern Corp., e.p. Stace,* is now reported L. R., 4 Ch. 682.

126, *Commercial Banking Corp. of India, &c., e.p. Wilson,* is now reported L. R., 8 Eq. 241.

126, *Transferor's liability.* Compare *Continental Banking Corp., Costello's Case,* L. R., 8 Eq. 504, *infra.*

126, *Transferor's liability.* In September, 1864, P. sold shares on the Stock Exchange, the name of S., an infant and a messenger in a bank, was given as transferee; either P. nor the company were aware that S. was an infant. In October a call was made

upon P., and in November he was informed that the directors had disallowed the transfer on the ground that S. was a person of insufficient means. In May, 1865, an action for calls was commenced by the company against S., who, in July, 1865, pleaded infancy. Several calls were subsequently made, but P. was not applied to for payment in respect of any of them. In Jan. 1868, a winding-up order was made. It was held that the laches of the company precluded the liquidator from having the name of P. placed on the list of contributories. *European Central R. Co., Parson's Case,* L. R., 8 Eq. 656.

P. 128, *Financial Corp.* v. *Lawrence* is now reported 38 L. J., C. P. 305; L. R., 4 C. P. 731.

131, *General Provident Assurance Co., Cross's Case,* is now reported 38 L. J., Ch. 583.

135, *European Central R. Co., e.p. Holden,* is now reported L. R., 8 Eq. 444.

135, *Power of vetoing transfers*—A transfer of shares by a holder who had not paid his calls was duly passed by the board of directors, who had power to veto transfers, thirty-four days after the entries relating to the transfer were cancelled by an officer of the company, without the authority of the directors. The company was afterwards wound up. It was held, that the transfer was invalid as having been sanctioned by mistake. *Bank of Hindustan, China and Japan, Anderson's Case,* L. R., 8 Eq. 509.

136, *after line* 20, insert—The members of benefit building societies can generally retire. See *Doncaster Permanent Building Society,* L. R., 3 Eq. 158; 36 L. J., Ch. 871.

140, *Robson* v. *Dodds* is now reported L. R., 8 Eq. 301.

142, *after line* 16, insert—The P. company instituted a suit to set aside bills of exchange held by T., on which a judgment had been obtained. T. petitioned to wind up the P. company, and an order was made. An injunction having been refused in the suit, an appeal from both these orders was dismissed in June, 1867. In Jan. 1869, C. was settled on the list of contributories; in Nov. 1869, he petitioned to be allowed to appeal to the House of Lords from both the orders, and to be allowed to prosecute the suit in the name of the P. Co.

The petitioner was not allowed to appeal as it was too late, but was allowed to prosecute the suit on his indemnifying the company against costs. *Peruvian R. Co.,* 18 W. R. 34.

144, *Validity of calls independent of other matters.* The articles of association of a company provided that in case all the capital was not subscribed, the registered members for the time being should, if the directors should by resolution so declare, be and continue associated for the objects thereof, and the regulations should be in force, and the business might be commenced. It was held, that until the whole capital was taken up, or the directors had passed a formal resolution, the directors had no power to make a call. *North Staffordshire Iron Co.* v. *Ward,* L. R., 3 Ex. 172.

152, *for* Birsted *read* Bristed.

166, *Davis* v. *Haycock* is now reported in L. R., 4 Ex. 373.

179, *Barned's Banking Co., Coupland's Claim,* is reported L. R., 8 Eq. 472; it has been affirmed 18 W. R. 122.

P. 196, *Blakeley Ordnance Co., Creyke's Case,* is reported 38 L. J., Ch. 677; it has been affirmed 18 W. R. 103.

220, *before line* 20 *from the bottom*, insert—It is just and equitable to wind up a company when it is shown that its assets and its existing liabilities are such as to make it reasonably certain that the existing and probable assets will be insufficient to meet its existing liabilities. *European Assurance Society, e.p. Potts,* 18 W. R. 9.

221, Companies Act, 1862, s. 80 (4). *Semble,* "debts" means debts which a creditor might instantly demand to be paid. *European Assurance Society, e.p. Potts,* 18 W. R. 9.

224, A petition was presented by a contributory to wind up a company; the contributory had no case, but the petition was supported by a creditor who had a case for winding-up the company. The court would not on that petition make an order, and give the conduct of the winding-up to the creditor. *Spence's Cement Co.*, 21 L. T. 413.

229, *Costs when petition is dismissed. In re Anglo-Egyptian Navigation Co.*, V.-C. James allowed opposing shareholders one set of costs in addition to the costs of the company.

231, Companies Act, 1862, s. 89. After an order had been made to continue a voluntary winding-up under the supervision of the court, it was resolved by a meeting of shareholders that the winding-up should be put an end to. A petition was presented for stay of winding-up proceedings. The petition was resisted by one shareholder. The court made the order prayed, but gave the shareholder an option (to be exercised within fourteen days) to retire from the company; the value of his interest to be ascertained by inquiry in chambers, and to be paid by the petitioner. *South Barrule Slate Quarry Co.*, L. R., 8 Eq. 688.

235, *Legal proceedings.* In the case of a company without a registered office, and which was in course of winding-up, service was directed to be made on the late secretary; service on the liquidator was not sufficient. *Re Petroleum Co.*, 15 W. R. 29.

239, *Sect.* 98 (1). When a decision under which a person's name has been placed on the list of contributories has been reversed, it is unnecessary for other persons similarly situated to apply to the court. *National Insurance Co., e.p. Munday*, 31 Beav. 206.

240, *Semble*, shareholders who have received dividends improperly declared can be ordered to refund under sect. 101. *Mercantile Trading Co., Stringer's Case,* L. R., 4 Ch. 475; 38 L. J., Ch. 698.

245, *Smith, Knight & Co., Hakim's Case,* is reported 38 L. J., Ch. 711.

251, Companies Act, 1862, s. 124. See *Peruvian Railways Co., ante,* p. lxxii.

251, Companies Act, 1862, s. 124, *note* (3). The restriction of time for appealing does not prevent the court discharging an order obtained improperly. *Estates Investment Co., e.p. Turnley,* L. R., 8 Eq. 227.

256, By reason of sect. 131, an infant shareholder could not on attaining twenty-one accept the liability in place of the transferor in opposition to the liquidator. *Continental Banking Corp., Castello's Case,* L. R., 8 Eq. 504.

P. 270, *Novation.* An annuitant of one insurance company had for several years accepted payments from another company which had taken over the business of the first company: there was not sufficient evidence of novation to release the first office. *Family Endowment Society*, 18 W. R. 112.

271, *Smith, Knight & Co., e.p. Gibson,* is reported 38 L. J., Ch. 673.

272, *e.p. Forward* is to be compared with *e.p. Kellock.*

272, *Oxford and Canterbury Halls Co., e.p. London and County Bank,* is reported L. R., 8 Eq. 691.

272, A company and firm employed a shipbuilder to build a ship, to be delivered to them on the following terms: one-third cash, and balance by the company's acceptance, or, at the contractor's option, by the firm's acceptance. The shipbuilder took the firm's bills, which were dishonoured, but he gave no notice to the company: proof was allowed in the winding-up of the company. *British and American Steam Navigation Co., Pearse's Claim,* L. R., 8 Eq. 506.

273, *Joint Stock Discount Co., e.p. Warrant Finance Co.,* has been reversed, 21 L. T. 345; 18 W. R. 102.

273, *Barned's Banking Co., Coupland's Claim,* is reported L. R., 8 Eq. 472; it has been affirmed 18 W. R. 122.

273, *Humber Iron Works, e.p. Warrant Finance Co.,* is reported 38 L. J., Ch. 712.

273, *Rule in e.p. Waring. Semble,* the principle of *e.p. Waring* applies where the insolvent estates are those of a company in course of winding-up and of a deceased person. *General Rolling Stock Co., e.p. The Alliance Bank,* 38 L. J., Ch. 714; 16 W. R. 631.

The R. Co. advanced money to M. M. accepted bills drawn by the company, and deposited shares to secure payment of the bills. M. accepted a new set of bills drawn by the company, which were intended to replace the former set. The former set, however, remained outstanding unpaid. The company was wound up, and its estate was insolvent. M. had died insolvent. The holders of the first set of bills had no right to the securities, though, *semble,* they would have if the second set had not been accepted. *Ib.*

275, *Commercial Banking Corp. of India, &c.,* is now reported L. R., 8 Eq. 241.

278, *De Rosaz* v. *Anglo-Italian Bank* is reported L. R., 4 Q. B. 462.

282, *Mercantile Trading Co., Stringer's Case,* is reported 38 L. J., Ch. 698.

296, *note* (1) should be attached to sect. 199.

299, *Dissolved company.* A company empowered to sue and be sued which had assigned its business, was ordered to be wound up eight years afterwards at the instance of an annuitant who had, in the meantime, received his annuity from the company that had taken over the business of the first company. *Family Endowment Society, e.p. Potts,* 21 L. T. 112.

301, *London and Marine Insurance Association, Smith's Case,* is reported 38 L. J., Ch. 681.

303, *Sect.* 203. A vesting order, under Companies Act, 1862, s. 203 can be obtained on *ex parte* motion. *Albert Life Assurance Co.,* 18 W. R. 91.

P. 305, *Section* 209. A trade partnership of more than twenty-five persons, which existed before the passing of 7 & 8 Vict. c. 110, and was formally registered under the 58th sect. of that act, but not otherwise registered, is not required to be registered under this act. *Womersley* v. *Merritt*, L. R., 4 Eq. 695; 37 L. J., Ch. 19.

314, *Disqualification of directors.* By the articles of association it was provided that any director who should accept or hold any office other than that of manager should be disqualified and cease from being a director. The secretary was appointed director; he continued to act, but ceased to receive his salary as secretary: he was not disqualified from acting as director. *Iron Ship Coating Co.* v. *Blunt*, L. R., 3 C. P. 484; 38 L. J., C. P. 273.

410, *Power of suing and being sued. In Banca Nazionale Sede Torino* v. *Hamburger*, 2 N. R. 369, it was said that a foreign company could not sue in its own name here, whatever its position in its own country.

420, *Barned's Banking Co., e.p. Forwood*, has been affirmed 21 L. T. 411.

436, *Rule* 74. Where one proceeding in a voluntary winding-up has been taken in one branch of the court, subsequent proceedings should be taken in the same branch. *Alexandra Printing Ink Co.*, 16 W. R. 456.

THE LAW OF JOINT STOCK COMPANIES.

INTRODUCTION.

A JOINT STOCK COMPANY may be defined as an association of individuals for purposes of profit, possessing a common capital contributed by the members composing it, such capital being commonly divided into shares, of which each member possesses one or more, and which are transferable by the owner. The business of the association is under the control of certain selected individuals called directors. Such an association was, in the eye of the common law, merely a large partnership, and it was not competent for the individuals composing it to constitute by their union a new *persona* distinct from the members of whom it was composed. Such a new persona could only be formed by a charter from the crown or by a special act of parliament, and when formed was styled a corporation (*a*).

Definition of a joint stock company.

With the advance of trade these associations or joint stock companies became numerous, but being before the law only large partnerships, the number of individuals composing them made it impossible for them to be satisfactorily dealt with in courts of either law or equity. It was impossible for the company to sue a member or a member the company; the company could maintain no suit against third parties; no adjustment of the rights of members or dissolution of the partnership could be obtained by individual members through the intervention of the courts; and each member might be sued by creditors of the company for the whole debts of the association. A corporation on the other hand, being a distinct person before the law,

Evils arising from the position of such a company in the eye of the common law.

(*a*) Except under the local custom of certain parts of the kingdom, as within the district of the Stannaries.

could sue or be sued by its members or by strangers; and the property of the corporation alone could be made liable for its debts, not the property or person of any individual member.

Attempts to remedy these evils.

The increase of these bodies, and the evils arising therefrom, soon attracted the attention of the legislature. The first remedy proposed was to put down such associations, and for this purpose the 6 Geo. 1, c. 18, known as "The Bubble Act," was passed. This attempt, however, not proving successful, that act was repealed in 1825 by the 6 Geo. 4, c. 91; and by the same act power was given to the crown to provide, in granting charters of incorporation, that the members should be individually liable for the debts of the corporation. This attempt to adapt the law to facts, by enabling the crown to cut down the former privileges of corporations, was succeeded in 1834 by the 4 & 5 Will. 4, c. 94, which enabled the crown to grant certain privileges to a company by letters-patent without incorporating it, especially that of suing and being sued by a public officer in the name of the company. This act was repealed by the 1 Vict. c. 73 (*d*), which enables the crown by letters-patent to confer any privilege on a company which may be conferred on it by incorporation, and to limit the liability of the members to a specified amount on each share. At the same time attempts were made to give a uniform character to the corporations created by special acts of parliament, and in the year 1845 the clauses usually introduced into such special acts were consolidated by the Companies Clauses Act, 8 Vict. c. 16, so as to form a uniform part of all such acts to be passed after that time. Similar acts were passed consolidating the clauses usually found in the special acts of such classes of associations as were most commonly incorporated (*c*).

By provisions in charter from the crown.

By letters-patent.

By provision of special acts of parliament.

By acts regulating joint stock companies.

But these improvements on the old law neither enabled any association to obtain a distinct personality by simple process of law, without recourse to the crown or legislature; nor did they compel such bodies to submit to the control of any general regulations, without option on their part. The first step in this direction was the passing of the 7 Geo. 4, c. 46 (*d*), in

Banking Act, 1826.

(*c*) E.g., the Lands Clauses Act, 8 Vict. c. 18, the Railways Clauses Act, 8 Vict. c. 20. For the history of legislation relative to companies empowered to sue and be sued, see *Van Sandau* v. *Moore*, 1 Russ. 441.

(*d*) These acts will be put out at length *post*.

1826, enabling joint stock banking companies to obtain the power of suing and being sued by a public officer on certain specified conditions, and making certain returns. But in 1844 the first general Joint Stock Companies Act (7 & 8 Vict. c. 110) was passed, which obliged all companies thenceforward to be registered with the register of Joint Stock Companies, and subjected them to the provisions of the act: it also enabled such companies to sue and be sued in their corporate names. Acts to regulate the winding up and dissolution of such companies were passed in 1844, 7 & 8 Vict. c. 111; 1848, 11 & 12 Vict. c. 45; and 1849, 12 & 13 Vict. c. 108. These acts still left the members of companies formed under them liable to the full extent of their means for the debts of the company, with the sole protection that the creditors were obliged to resort in the first instance to the company before proceeding to enforce payment from an individual member (1). In 1855 the 18 & 19 Vict. c. 133 enabled companies registered under the act of 1844 to obtain a certificate of limited liability, but this privilege was refused to insurance companies.

Joint Stock Companies Act, 1844.

Winding-up Acts, 1844, 1848, 1849.

Limited Liability Act, 1855.

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(1) It was, however, frequently attempted to limit the liability of shareholders to the amount of their shares by the insertion of clauses to that effect in the deed of settlement of the company. A specimen of the elaborate clauses by which it was attempted to effect this object may be found in *Re The Professional Life Assurance Co.*, L. R., 3 Eq. 670; L. R., 3 Ch. 167; 36 L. J., Ch. 442 (clauses 263—266). In one case Stuart, V. C., thought that clauses in the deed of settlement, together with registration under the 7 & 8 Vict. c. 110, would bind all persons dealing with the company, but this case was overruled on appeal, Lord Cranworth saying that such stipulations were of no more value against persons outside the company than an agreement between ordinary partners that each should only be liable for a given amount. *Sea, Fire and Life Assurance Co., Greenwood's Case*, 2 Sm. & G. 95; 3 D. M. & G. 459; 23 L. J., Ch. 966. See also *State Fire Insurance Co., e. p. Mendeth*, 32 L. J., Ch. 300. And it was held to be no ground to remove a name from the list of contributories, that the contributory had been induced to become a member of the company by the assurance that he would thereby incur only a limited liability, for he must be taken to have known that such a limited liability was not possible. *Amazon Life Assurance and Loan Co., Blackburn's Case*, 8 D. M. & G. 177. It was held in *The Worcester Corn Exchange Co.*, 3 D. M. & G. 180, that where there was a clause in the deed of settlement so limiting liability, neither a director, nor a bank in which a director was a partner and which so had notice of the deed, could recover money advanced to the company when its capital was all spent; and in *The Anglo-Californian Gold Mining Co.*, 37 L. J., Ch. 78, Malins, V. C., refused

Provisions in deed of settlement limiting liability.

Their effect.

to hold shareholders personally liable to their directors, under such circumstances, either for money advanced to the company, or for the salaries of the directors. But in *The Norwich Yarn Co., e.p. Bignold*, 22 Beav. 143, directors were allowed to charge against the company money borrowed from a bank and employed in carrying on the business of the company after its capital was expended, although the deed of settlement contained such clauses. There were in this case circumstances to show the assent of the shareholders in the course pursued (*e*).

Limitation of liability by contracts.

It was of course competent for any one dealing with a company to contract to hold the shareholders responsible to only a limited extent.

Construction and effect of such contracts.

Where a policy of insurance contained a provision that the policy should not be construed to render the shareholders of the insuring company liable beyond the amount of their respective shares, but that the capital stock of the company should alone be liable to answer all claims in respect of the policy, it was held that the policy holder could have no remedy against individual shareholders except in respect of the amount unpaid on their shares. *Athenæum Life Assurance Society, e. p. Durham*, 4 H. & J. 517; 27 L. J., Ch. 798 (*f*).

Where an insurance company had issued policies providing that the capital stock and funds of the company should alone be liable to pay the amount insured, and the company came to be wound up, and the claims on the policies exceeded the assets of the company, besides debts to a large amount due to general creditors, it was held by Wood, V. C., that the policy holders had no charge on the assets of the company so as to entitle them to any priority over the general creditors, though they had in the sense of entitling them to a receiver; and this was affirmed by the Lords Justices, *dubitante* Knight Bruce. *State Fire Insurance Co.*, 1 H. & M. 457; 1 D., J. & S. 634; 35 L. J., Ch. 834. In the case of the same company, it was held that when the nominal capital of the company had been called up and distributed *pari passu* between the policy holders and general creditors, and a further call was made to be divided among the general creditors, the policy holders were not entitled to have this fund employed in recouping to the nominal capital so much of it as had been spent otherwise than in payment of the policies, as there was no contract that the nominal capital should be set apart for their security; but that the costs of the winding-up, other than those of the realization of the assets, must be paid by a separate call, so as not to throw them on the policy holders (*g*). *State Fire Insurance*

(*e*) Vide *post*, "The Liability of Companies in respect of Matters *ultra vires* by which they have benefited," par. **22**.

(*f*) Vide also *Halkett* v. *Merchant Traders' Association*, 13 Q. B. 960; 29 L. J., Q. B. 59; *Hassell* v. *Merchant Traders' Association*, 4 Ex. 525; *Evans* v. *Coventry*, 3 Dr. 75; 5 D. M. & G. 911; 8 D. M. & G. 835; 25 L. J., Ch. 834; and *Merchant Traders' Association, Lord Talbot's Case*, 5 De G. & Sm. 386; 21 L. J., Ch. 846, where the shareholder was held liable for his full subscription, and not merely the deposit.

(*g*) So the costs of an action by a policy holder to establish his claim. *Athenæum Life Assurance Society, e.p. Prince of Wales Life Assurance Co.*, 3 De G. & J. 660.

Co., 34 L. J., Ch. 436. In this case question of marshalling was ordered by the Lords Justices to be reserved, and was never actually decided, though Wood, V. C., expressed an opinion against it. But in *The Professional Life Assurance Co.*, L. R., 3 Eq. 668, 3 Ch. 167; 36 L. J., Ch. 442, it was decided by Lord Romilly, under similar circumstances, that the doctrine of marshalling did not apply in favour of the policy holders. It was also decided by Lord Romilly, in the same case, and affirmed by Rolt, L. J., that, there being a winding-up, the costs of the realization of the assets were not to be deducted from the costs of the winding-up, but with them were to be paid separately by the shareholders (*h*). In *English and Irish Church and University Assurance Society*, 1 H. & M. 85; 11 W. R. 681, it was held, that, under such clauses, policy holders, whether participating or non-participating, were not partners, but were entitled to be paid *pari passu* with general creditors. And in *Kearns* v. *Leaf*, 1 H. & M. 681, and *Aldebert* v. *Leaf*, 12 W. R. 462; 3 N. R. 455, policy holders were held entitled to restrain the company from disposing of the assets liable to the payment of their policies contrary to the provisions of the deed of settlement; and it was decided that the doctrine of *King* v. *The Accumulative Society*, 3 C. B., N. S. 151, that the transfer of assets being *ultra vires* and void gave no right of action, was no answer to such a suit. Where in the policies issued by a marine mutual insurance company after an acknowledgment of payment of premium in blank, there were printed in line by themselves the words twenty pounds per centum, it was held, that these words did not limit the liability of the members to twenty per cent. of the value of their own ships insured. *Gray* v. *Gibson*, 36 L. J., C. P. 99; L. R., 2 C. P. 120.

An action was brought against a shareholder on a policy limiting the liability of each shareholder to the amount of his shares, the defendant being the holder of shares not fully paid up. Held, that the action was properly brought against defendant and not against the directors who signed the policy. *Reid* v. *Allan*, 19 L. J., Ex. 39; 4 Ex. 326.

An action was brought against one of the directors of the company who had executed such a policy. It was held that there was a personal responsibility, the funds of the company being sufficient. *Dawson* v. *Wrench*, 18 L. J. 229; 3 Ex. 359; *Dowdall* v. *Hallett*, 19 L. J., Q. B. 37. *Hallett* v. *Dowdall*, 21 L. J., Q. B. 98; 18 Q. B. 2, was a similar case, except that the four directors who executed the policy were sued jointly. The directors of a copper mining company covenanted to pay the price of a mine by quarterly instalments out of the funds of the company, provided that, if they should not have received deposits or instalments from the shareholders sufficient to enable the directors to pay the purchase-money at the stated times, the directors should be allowed six months further.. This was held to be an absolute covenant. *Hancock* v. *Hodgson*, 4 Bing. 269.

The churchwardens and overseers of the parish of Z., for themselves, their successors churchwardens and overseers of the said

(*h*) It was also decided that, on the provisions of the deed of settlement, shareholders who are creditors of the company were entitled to have their debts paid in full (less their share of the call) by a further call beyond the unpaid capital.

parish, and their assigns, covenanted to pay certain sums, with a proviso "that nothing in these presents contained shall extend, or be deemed, adjudged, construed or taken to extend, to any personal covenant of or obligation upon the said several persons parties thereto of the third part, or in anywise personally affect them, or any or either of them, or any or either of their executors, administrators, goods, &c. in their private capacity, but shall be and is intended to be binding and obligatory on churchwardens and overseers of the poor of the parish, &c. and their successors for the time being as such churchwardens and overseers, but not further or otherwise." It was held that the covenant was personal, and the proviso being repugnant was void. *Furnival* v. *Coombes*, 5 Man. & Gr. 736.

A contract to pay out of particular funds will not support an action for debt. *Addison* v. *Mayor of Preston*, 12 C. B. 108.

The insertion of such a clause in a bill of exchange has been held to be repugnant to the nature of a negociable instrument and consequently void. *Pedell* v. *Gwynn*, 1 H. & N. 590; 26 L. J., Ex. 199; *Gordon* v. *Sea, Fire and Life Assurance Society*, 1 H. & N. 599; 26 L. J., Ex. 202.

The secretary of a company signed an agreement that no director or shareholder of the company should be personally responsible for the salaries of any of the officers of the company, and that no officer should be paid for his services until a sufficient sum should be obtained by the funds of the company for that purpose. Held, that the shareholders were not exonerated from contributing in the winding-up to payment of arrears of salary due to the secretary. *Independent Assurance Co., e.p. Cope*, 1 Sim., N. S. 54. Held, that as the company was a corporation there was an absolute covenant, and it was not necessary in suing on it to aver that the funds were sufficient. *Sunderland Marine Insurance Co.* v. *Kearney*, 20 L. J., Q. B. 417; 16 Q. B. 925.

A company had power to veto transfers, but if the transferor desired it they were to buy his shares out of the funds of the company. *Semble*, their being unable from want of funds to buy the shares did not take away their power of vetoing transfers. *Taft* v. *Harrison*, 10 Hare, 489.

Where the amounts payable on policies were to be paid only out of the funds of a company, and under the deed of settlement calls were only to be made of a certain amount at stated intervals, in the winding-up calls might be made for the purpose of paying the amounts due on the policies, to the full extent unpaid on each share at once, without any deduction for immediate payment. *Merchant Traders' &c. Insurance Association, e.p. Talbot*, 5 De G. & Sm. 386.

Mutual societies.

Where the liabilities incurred are wholly between members of an association there is no difficulty in limiting the liability in any manner that may be desired. Such societies are formed frequently for the purpose of insurance.

By the rules of a mutual insurance association it was provided that the members should, severally, not jointly or in partnership, and each in proportion to the amount of his own insurance, insure the ships of the other members for a year certain, and so on from year to year, unless notice to the contrary be given; and that this and the other rules should be read with the policy, and be as binding on all parties

as if the same were actually therein inserted. The affairs of the association were to be managed by a committee; and all moneys of the association were to be kept in their name at a banker's. All sums to be paid by the association to a suffering member were to be ascertained and settled by the committee and to be drawn for on the members at two months' date. Defaulting members were to be liable to a deduction on the amounts of their policies; but were nevertheless to be liable to contribute to all losses occurring during the continuance of their policies. In case of loss, the owner of the lost ship was to remain a member of the association for a period, if not already fulfilled, of six months; in case of sale, his liability was to cease from the date of the transfer.

A person desirous of insuring his ship used to send a written application to the secretary, authorizing him to insure the ship and to underwrite all policies of insurance upon all ships that might from time to time be approved by the committee, and undertaking to accept and pay all drafts for losses and contributions that should be drawn or ordered to be paid by the committee. Upon this application being accepted, the applicant became a member. Generally he executed a power of attorney, whereby the executing parties empowered the secretary to recover and receive from all persons liable to pay or to contribute the same all sums which were or should become due to the executing parties, or any of them, or to the association collectively.

It was held that liability of each member extended only to the payment of such proportions as the rules prescribed of the various losses that occurred during the subsistence of his policy. That payment to the secretary discharged the paying member to the extent of such payment, and that the costs of winding up were to be borne by the receivers and payees pro ratâ according to the amounts to be paid or received by them respectively. *London Marine Insurance Association, Andrews' Case*, L. R., 8 Eq. 176.

Joint Stock Companies Act, 1856.

In 1856, the 19 & 20 Vict. c. 47 was passed under the auspices of Mr. Lowe as vice-president of the Board of Trade, consolidating the various provisions of the numerous preceding Joint Stock Companies Acts. This act, however, was itself soon amended and varied by the 20 & 21 Vict. cc. 14, 49 and 80, and by the 21 & 22 Vict. cc. 90 and 91. A new act, sweeping away the former enactments and creating a complete body of law in their place, was accordingly passed in 1862, and this, the 25 & 26 Vict. c. 89, now contains the great body of law on the subject. It is supplemented by the Industrial Societies Act, 1862, 25 & 26 Vict. c. 87, containing very similar provisions, with some additional privileges, for the regulation of industrial and provident societies; by the 28 & 29 Vict. c. 86, extending the principle of limited liability to

Companies Act, 1862.

Industrial Societies Act, 1862.

Partnership Amendment Act, 1865.

Companies Act, 1867.

persons advancing money to private and unregistered partnerships; and by the Companies Act, 1867, 30 & 31 Vict. c. 131, introducing additional provisions for the security of creditors and shareholders, intended to remedy the evils in the constitution and management of joint stock companies brought to light in the panic of 1866, and to incorporate the suggestions of a committee of the House of Commons appointed in consequence of that panic.

Companies may be divided into—1. Companies formed by agreement, which in most respects are governed by the ordinary law of partnership. [Only cost-book mining companies and associations not having gain for their object can now be formed in this way (Companies Act, 1862, s. 4).] 2. Companies governed by the Letters Patent Act (7 Will. 4 & 1 Vict. c. 73). 3. Companies empowered to sue and be sued by special act, or as being governed by the Banking Companies Act (7 Geo. 4, c. 46). 4. Companies incorporated by special act of parliament, which were mostly formed for the purpose of executing works of a public nature; the more recent of these are governed by the Companies Clauses Consolidation Act, 1845. 5. Companies incorporated by royal charter. 6. Companies incorporated by registration, which are governed by the Companies Act, 1862, and acts supplementing and amending that statute.

It is intended in this work to treat principally of the last-mentioned companies. The Letters Patent Act, 7 Will. 4 & 1 Vict. c. 73, and the Banking Companies Act, 7 Geo. 4, c. 46, will be printed in full with annotations. The law specially relating to companies incorporated otherwise than by registration will be omitted. The law relating to other companies, so far as they differ from ordinary partnerships, will be treated incidentally.

CHAPTER I.

THE FORMATION OF COMPANIES AND MATTERS INCIDENTAL THERETO.

Promoters.

1. Persons engaged in forming a company are called promoters. They occupy a fiduciary relationship to the company, to the extent that they cannot obtain any secret benefit from acts done on behalf of the company (1); but no one can be the agent of a company before it is formed, and a company is not liable for acts done by its promoters on its behalf (2); but, in the absence of fraud (3), a company is liable for the payment of money or other acts stipulated for in the instrument under which a company is formed, even to the promoters themselves, inasmuch as every individual joining the company acquiesces in such stipulations (4). And a company will not be allowed by the Court of Chancery to retain a benefit derived from misrepresentations put forth for the purpose of bringing it into existence (5).

Liability of companies for acts of promoters.

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(1) See "Status of Directors and Agents," *post*, 25 (3), Ch. IV.

(2) *Gunn* v. *London and Lancashire Insurance Co.*, 12 C. B., N. S. 694; *Hutchinson* v. *Surrey Consumers of Gas Co.*, 11 C. B. 689; 21 L. J., C. P. 1; *Payne* v. *New South Wales Coal, &c. Co.*, 10 Ex. 283; 24 L. J., Ex. 117; *Kelner* v. *Baxter*, L. R., C. P. 174; 36 L. J., C. P. 94, where the defendants signed on behalf of a projected company, and Willes, J., said:—"I apprehend the company could only become liable on a new contract. Could the company become liable by a mere ratification? Clearly not. Ratification can only be by a person ascertained at the time of the act done." *Scott* v. *Lord Ebury*, L. R., 2 C. P. 255; 36 L. J., C. P. 161. The question is, whether the company has merely attempted to ratify the contract of the promoters, or whether it has entered into a new contract to do that which the promoters had contracted to do. Such a contract was implied from the conduct of the company in *Browning* v. *Great Central Mining Co.*, 5 H. & N. 856. At law.

In *Thomas* v. *Hobler*, 8 Jur., N. S. 125, the plaintiff had assigned a lease to a cost-book mining company, the terms on which the company was to hold the property was stated in the rules of the company; the plaintiff sought without success to incorporate into the contract terms agreed on previously to the formation of the company by persons who were to be and eventually became directors.

Of course a company is not liable for contracts entered into by

Par. 1 (2).

persons other than the promoters intending to act on its behalf before its formation. *Hopcraft* v. *Parker*, 15 W. R. 842.

In equity.

Nor in equity (*Independent Assurance Co., e.p. Terrell*, 1 Sim., N. S. 126; 21 L. J., Ch. 222) the case was reversed on appeal, on grounds not affecting this principle. *Terrell* v. *Hutton*, 23 L. J., Ch. 345; 4 H. L. 1091. There has, however, been some doubt thrown on this in many cases; but it is conceived that all of them, except *Currie's Case*, relating as they do to the restraint of parliamentary powers, ought to be considered as founded on the principle stated in note (4), which see. See the following cases in support of the proposition that such companies are not bound in equity by their promoters' acts: *Preston* v. *Liverpool and Manchester R. Co.*, 5 H. L. 605; *Caledonian R. Co.* v. *Magistrates of Helenburgh*, 2 Mac. 391; *Eastern Counties R. Co.* v. *Hawkes*, 5 H. L. 334; 24 L. J., Ch. 601; *Leominster Canal Co.* v. *Shrewsbury, &c. R. Co.*, 3 K. & J. 654.

The authorities and arguments were most elaborately considered by Kindersley, V. C., in the recent case of *Shrewsbury, Earl of*, v. *North Staffordshire R. Co.*, L. R., 1 Eq. 593; 35 L. J., Ch. 156. He decided that a company cannot be bound by the contracts of its promoters, when the thing contracted to be done is *ultra vires* of the company when formed. He expressed his opinion that it would be most beneficial and consistent with legal principle to hold, that the contracts of promoters were in no case binding on the company, unless sanctioned by clauses in the instrumeuts constituting the company; but said, that if the contract in the case before him had not been *ultra vires*, he should have been obliged by the authorities to decide that it was binding on the company, but that he should have expected that such decision would have been immediately appealed from and reversed.

Five persons had agreed to form a company; they met together and resolved, "each of the gentlemen present agrees to hold 100 shares in the company, and also to execute the articles and memorandum of association when ready and act as directors of the company." They signed the articles and memorandum in respect of twenty-one shares only each. By the articles, a qualification to be a director was the holding 100 shares. The subscribers were to appoint directors, and in the meantime to act as directors, and they acted as directors. On the winding-up of the company, it was held that the joint effect of the circumstances was to create a contract to take 100 shares each; *Great Northern and Midland Coal Co., e.p. Currie* (2), 32 L. J., Ch. 421; but it is thought that this case, when compared with other cases, set out below, on contracts respecting the issue of shares, cannot be upheld.

And promoters can receive applications for shares on which a binding contract can be founded. See "Contracts relating to the issue of Shares," Chapter II.

(3) See C. A. 1867, s. 38.

(4) So, if the instrument constituting the company direct payment of the expenses incurred in its formation, a promoter is entitled to compensation for his services. *Carden* v. *General Cemetery Co.*, 5 Bing., N. C. 253. If the articles of association direct the payment of a given sum to a promoter, it is not necessary that he should deliver a bill of costs prior to the payment. *Croskey* v. *Bank of Wales*, 4

Gif. 314; 9 Jur., N. S. 595. Compare *Madrid Bank, ex p. Williams*, *Hitchens* v. *Congreves* and other cases, *post*, "Status of Directors and Agents," **25**.

Prospectus.

(5) In order to induce persons to become members of a company, a document, called a prospectus, is usually issued, containing a statement of the object of the company; the amount of its proposed capital; the number and amount of shares therein, and a sketch of the material points of the constitution of the company. Misrepresentations, as will hereafter be seen, contained in such documents are considered the misrepresentation of the company (*a*), and the persons issuing them are personally responsible for the damage caused by such misrepresentation (*b*).

Parliamentary powers to be used in good faith.

It has on the same principle been held, that companies will not be allowed to exercise parliamentary powers in derogation of stipulations made by the promoters in order to obtain such powers, though the remarks of the judges in many of these cases point to their being founded on the doctrine, that companies are liable in equity for the acts of their promoters. See *Edwards* v. *The Grand Junction R. Co.*, 1 My. & Cr. 680; 6 L. J., Ch. 47; *Stanley* v. *Chester and Birkenhead R. Co.*, 3 My. & Cr. 773; *Petre* v. *Eastern Counties R. Co.*, 1 R. C. 462.

In a case where it was held that a contract entered into by the promoters of a company is not binding on the company, but where a company has acquired parliamentary powers under such contracts, the company will not be allowed to exercise such powers unless on terms of carrying out such contracts, V. C. Wood said: "They cannot exercise the powers given by parliament to such projectors in their corporate capacity, and at the same time refuse to comply with those terms on the faith of which all opposition to their obtaining such powers was withheld." *Lindsay* v. *Great Northern R. Co.*, 10 Hare, 682. In one of the latest cases V. C. Wood thought a contract entered into by the promoters of a railway company for the purchase of land became binding on their obtaining their act, the obtaining the act operating as a ratification of the contract by them and being sufficient consideration on their part to support it. *Bedford R. Co.* v. *Stanley*, 2 J. & H. 746. And in *Williams* v. *St. George's Harbour Company*, 2 De G. & J. 547; 27 L. J., Ch. 691, the grounds given for the decision were that the conduct of the company amounted to a ratification. See further on this subject, *Shelford on Railways*, vol. 2, pp. 216, 513, 4th ed.

Liability of promoters.

2. The promoters of a company are personally liable upon contracts made by them on behalf of, or advances obtained by them for the purposes of the proposed company; and they cannot be relieved from that liability by the subsequent adoption of their contracts and acts by the company when formed, except by the assent of the person with whom they have contracted (1).

(*a*) See "Liability of Companies for Fraud, &c.," *post*, **15**.

(*b*) See "Liabilities of Directors and Agents," *post*, **27**.

Par. 2. Persons associated for the purpose of forming a company are not partners (2), and are not liable for the acts of or expenses incurred by one another, except so far as they have authorized the others to do those acts and incur those expenses as their own agent (3); and it is thought that persons who have undertaken to contribute to the preliminary expenses do not incur any direct liability on contracts made by promoters (4).

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(1) In *Kelner* v. *Baxter*, L. R., 2 C. P. 174; 36 L. J., C. P. 94, the defendants signed a contract as agents for a proposed company. The court held that if the company had existed at the time of the contract, the persons signing it would have signed as the agents of the company, but as it was not then existing the contract must be binding on them personally, and that they could not be discharged from their liability under the contract by its adoption by the company without the assent of the plaintiffs, the contractees. In *Scott* v. *Lord Ebury*, L. R., 2 C. P. 174; 36 L. J., C. P. 94, the plaintiffs advanced 500*l.* on the faith of a cheque signed by two of the promoters of a railway company, and on an agreement that it was to be paid out of calls. The company obtained their special act, in which the usual clause was inserted that the company should pay the expenses of obtaining the act, and the directors passed a resolution adopting this among other contracts. No shares were allotted, and no calls made. The plaintiffs recovered judgment against the company for the 500*l.*, but could obtain no fruits of their judgment. They then recovered judgment against the persons who had signed the cheque, and the Court of Common Pleas discharged a rule to enter the verdict for the defendants, holding that the advance was made on the personal responsibility of those who had signed the cheque, and that there could be no subsequent ratification by the company which would discharge them from that responsibility. "Putting out of view the cases of assignees of bankrupts and administrators, there is no case in which a person can by a subsequent ratification make himself liable as principal, so as to discharge the agent, where the principal was not in existence at the time of the original contract." Per Willes, J.

(2) *Reynell* v. *Lewis*, 15 M. & W. 517; *Wyld* v. *Hopkins*, Ib.; *Bright* v. *Hutton*, 3 H. L. Ca. 368; *Hutton* v. *Thompson*, 3 H. L. Ca. 161.

Evidence of authority to pledge the promoter's credit.

(3) In *Reynell* v. *Lewis* and *Wyld* v. *Hopkins*, 15 M. & W. 517, it was laid down that the mere fact of a person being a member of a provisional committee, and the publication of his name as such in a prospectus, did not imply his liability for expenses incurred, but that it was a question for a jury whether he had given authority to pledge his credit for such expenses. In *Wood* v. *Duke of Argyll*, 6 Man. & Gr. 928, and *Lake* v. *Duke of Argyll*, 6 Q. B. 477, different juries drew contrary inferences from the same premises as to whether the defendant had authorized his credit to be pledged. In *Burbidge* v. *Morris*, 3 H. & C. 664; 34 L. J., Ex. 131, M. had consented to his name being inserted in the prospectus of a proposed company, and had suggested alterations in the proof and its advertisement in a particular newspaper; but it was held that there was

no evidence to go to the jury that he had authorized the secretary to pledge his credit for the expenses of advertising the company.

In *Gorgier* v. *Morris*, 7 C. B., N. S. 788; 29 L. J., C. P. 208, an action against a promoter for non-delivery of shares failed, as there was no consideration to support the contract sued upon.

An action for money had and received could not be maintained against A., B. and C., three of the provisional committee of a projected railway company, to recover deposits paid by the plaintiff; it appeared that the money was paid by the plaintiff to bankers, who gave him a receipt on account of five persons as trustees of the company. A. alone of the defendants was a trustee. *Watson* v. *Charlemont*, 18 L. J., Q. B. 65; 12 Q. B. 856.

R. allowed his name to be published as one of the provisional committee of a projected railway company and attended two meetings, at which the only business transacted was the appointment of a managing committee. After some expenses incurred, the scheme proved abortive. R. was not liable to contribute to those expenses. *Direct Exeter R. Co., e.p. Roberts*, 19 L. J., Ch. 366; 2 M. & G. 185.

In an action for return of deposit paid to the bankers of a provisional committee against a member of such committee, the plaintiff must aver that the bankers had the authority of the particular defendant. *Hayes* v. *Stirling*, 11 Ir. C. L. R. 277.

Four directors, whose names appeared in a prospectus of a company, were sued for return of deposit paid to the company's bankers. One of the defendants was not shown to have been a director at the time the money was paid. His name was in the company's pass book. He denied that he had consented to be a director; that he knew his name was in the pass book or prospectus; he denied that he had acted as a director, though he had at times been with the other directors in the board room. The jury found a verdict for the plaintiff, but a new trial was directed. *Drouet* v. *Taylor*, 16 C. B. 671.

The plaintiff, an allottee of shares in a projected railway company, paid his deposit into the bank named in the prospectus which had been circulated by the defendant's sanction, his name appearing therein as one of the provisional committee and as chairman of the committee of management. The defendant had not personally superintended the allotment of shares and had taken no active part in the concern, having been present once only at any meeting, when he acted in the capacity of chairman, but dissented from the proceedings. The project having failed, the defendant was not liable to the plaintiff in an action for money had and received on account of the deposit, and letters written by the secretary of the company to the plaintiff, there being no other evidence of their being written by the defendant's authority, were inadmissible. *Burnside* v. *Dayrell*, 19 L. J., Ex. 46; 3 Ex. 224.

The secretary of a provisional committee could not recover for services without showing that the defendant, a member of the committee, had contracted with him as principal. *Wilson* v. *Curzon*, 16 L. J., Ex. 122; 15 M. & W. 532.

It is a question of fact to be determined by the jury from all the evidence, whether a member of a provisional committee has appointed the managing committee his agents. *Williams* v. *Pigott*, 17 L. J., Ex. 196; 2 Ex. 201.

Par. 2 (3).

Where the defendant had assented to the appointment of the plaintiff as valuer to a committee, it was a question for the jury whether the defendant had intended to pledge his personal credit. *Higgins* v. *Hopkins*, 18 L. J., Ex. 113; 3 Ex. 163.

The fact of a person becoming a member of a provisional committee may be important evidence to show that he pledged his credit to tradesmen supplying the committee. *Bailey* v. *Macauley*, 19 L. J., Q. B. 73; 15 Q. B. 533.

In an action by a solicitor for the expense of preparing a partnership deed against a person who had afterwards become a director, it was left to the jury to determine whether before he became a director he had so acted as to become one of the employers of the plaintiff. The directors seem to have been liable, from circumstances not appearing in the report. *Bell* v. *Francis*, 9 C. & P. 66. Where a local committee was liable for the salary of a secretary, it was left to the jury to determine whether a person who had joined the committee after the secretary was appointed had made himself liable. *Kerridge* v. *Hesse*, 9 C. & P. 200.

Members of a provisional committee were appointed, without their consent, members of the acting committee. Advertisements to that effect became known to them, but they never acted. Held, they were not liable for contracts made in their absence. *Griffin* v. *Beverley*, 2 C. & K. 648.

The tender of 20*l.* to the attorney of a company was not evidence to go to the jury of admission of liability by a member of the provisional committee who had other dealings with the attorney. *Barker* v. *Lyndon*, 2 C. & K. 651.

In an action for work and labour against two members of a provisional committee, the judge directed the jury that before they found a verdict for the plaintiffs, they must be satisfied that the defendants had actually themselves, or by their agents, authorized the plaintiffs to do the work, or that some one assuming to act for them had employed the plaintiffs, and they had afterwards ratified that act. Held, in the Exchequer Chamber, that the direction was correct. *Morris* v. *Henderson*, 8 N. C. 684.

A resolution that the committee were not to incur any personal responsibility was put in evidence in an action by an engineer against a provisional committeeman. *Rennie* v. *Clarke*, 19 L. J., Ex. 278; 5 Ex. 292.

In *Giles* v. *Smith*, 11 Jur. 334, *Landmann* v. *Entwistle*, 21 L. J., Ex. 208; 7 Ex. 632, the plaintiffs had been employed under resolutions expressly exonerating the provisional committee from personal liability, and could not for that reason sue them.

Minutes of resolutions made in the books of a provisional committee by the secretary, not signed by anybody, appointing an engineer, were not allowed to be put in evidence in an action by the engineer against a member of the committee. *Rennie* v. *Wynn*, 19 L. J., Ex. 2; 1 Ex. 691.

That work done by a builder was done on land in the occupation of the defendant, a member of a provisional committee of a projected company, with his assent, was no evidence to go to a jury that the order for the work was given by his authority or that the work was done on his credit. *Patrick* v. *Reynolds*, 1 C. B., N. S. 727.

In an action against A., B. and C. for goods ordered by A. and B. as members of a proposed company previously to the time when C. joined the company, payments were made on the contract from time to time after C. joined. C. took an active part. The action could not be sustained, as there was no ground for implying a new contract after he became member. *Beale* v. *Mouls*, 16 L. J., Q. B. 410; 10 Q. B. 976.

The plaintiff was appointed engineer to a company at a meeting of a provisional committee. The defendant had consented to join that committee. A person of the defendant's name was present at the meeting. Held, there was no evidence to go to the jury of the defendant's identity with that person. *Giles* v. *Cornfoot*, 2 C. & K. 653. The same principles are applicable to the law of Scotland. It was held, that the being a provisional committeeman did not make a person liable for preliminary expenses, and the person suing must aver not only employment by the defendant but the manner of employment. *M'Ewan* v. *Campbell*, 2 Macq. 499.

In an action for the price of stationery against a member of a provisional committee for stationery supplied at the order of the secretary: Held, that the jury were properly directed that it was matter of inference that the defendant had, by consenting to join the provisional committee, constituted the secretary his agent to order such things as were necessary to enable the committee to go on, and that the jury had properly found for the plaintiff in respect of the stationery supplied after such consent. *Barnett* v. *Lambert*, 15 L. J., Ex. 305; 15 M. & W. 489.

Prospectuses were printed and articles of stationery supplied by order of the solicitor of a projected railway company. A member of the provisional committee was not liable, as there was no evidence of any authority of the defendant or the committee. *Cooke* v. *Tonkin*, 16 L. J., Q. B. 153; 9 Q. B. 936.

A prospectus issued by a projected railway company gave the names of a provisional committee, and also of a committee of management, who were thereby empowered to apply the funds of the company to preliminary expenses. They were not authorized to pledge the credit of the provisional committee. *Dawson* v. *Morrison*, 16 L. J., C. P. 240; 5 R. C. 62.

In an action against a member of a provisional committee of a foreign railway company, Erle, J., in the particular case, thought it sufficient to leave it to the jury to determine: 1. Whether he had consented to join the committee. 2. Whether he knew they continued to act. 3. Whether the expenses incurred were usual and reasonable. *Barrett* v. *Blunt*, 2 C. & K. 271.

In *Maddick* v. *Marshall*, 16 C. B., N. S. 387; 17 C. B., N. S. 829; the defendant and others, directors of a proposed company, passed a resolution that the company should be advertised, and directed the secretary to take steps for that purpose. The secretary had induced the directors to act by assuring them that they should incur no liability, but that he would be responsible for the preliminary expenses. The secretary got the plaintiff, an advertising agent, to insert the advertisement by showing him the prospectus of the company and the resolution. Held, that there was evidence to go to the jury of the defendant's responsibility. From this case *Riley* v. *Pakington*, L. R., 2 C. P. 536; 36 L. J., C. P. 206, was considered not distinguishable. There a

Par. 2 (3).

resolution was passed that the prospectus, marked with the initials of the chairman, be approved and printed. W. undertook to be responsible for the preliminary expenses. W. took the prospectus to a printer, said he had the chairman's authority and showed his initials. Held, that there was evidence for the jury of the chairman's liability. In *Collingwood* v. *Berkeley*, 16 C. B., N. S. 145; 12 W. R. 13, the prospectus of a company for the conveyance of emigrants to British Columbia contained statements calculated to induce intending emigrants to believe that arrangements were made for their conveyance by that route. The secretary showed the prospectus to the defendants, and asked them to become directors, to which they consented on being qualified and indemnified. Their names were inserted, and the prospectus advertised. Held, that there was evidence to go to the jury that an emigrant who contracted for his passage and paid his fare on the faith of the representations in the prospectus did so on the credit of the defendants, and was entitled to sue them for a breach of the contract.

In an action for return of a deposit, a resolution purporting to be moved by the defendant, contained in a minute book kept and written by the secretary to the undertaking, and which was handed by the managing committee to a committee appointed to inquire into the affairs of the concern as one of their books, was admissible in evidence against the defendant. *Ashpital* v. *Sercombe*, 19 L. J., Ex. 82; 5 Ex. 147.

Extent of liability.

Persons who have authorized the promoters to pledge their credit are not liable to creditors for goods supplied before the authority was given. *Barnett* v. *Lambert*, 15 M. & W. 489; 15 L. J., Ex. 305.

A member of a committee, formed for the purpose of promoting a bill in parliament, is not liable to the solicitor of the committee for work done for the committee before he became a member. *Brenmer* v. *Chamberlayne*, 2 C. & K. 560. See also *Direct Exeter, &c. R. Co., e.p. Tanner*, 5 De G. & Sm. 182, *post*, 18, also par. 4 (2).

Direct liability on contracts to contribute.

(4) Where the subscribers to a subscription contract had covenanted to pay preliminary expenses, on the winding-up of the company it appeared that the directors had received more than sufficient to pay all the necessary costs, &c., but had applied the money to purposes which were alleged by the subscribers to be unauthorized; and a compromise was come to between the managing committee and the official manager under which they paid a sum in full of all demands of the contributories on them. A call was made on the subscribers to pay the debts incurred by the directors. L. J. Knight Bruce gave no opinion as to the direct liability of the shareholders to the creditors; it was sufficient, he said, that the creditors had a claim on the managing committee, and that the debts were incurred by the committee in the proper prosecution of the designs of the association. *London and Birmingham Extension R. Co., e.p. Hopkinson*, 7 D. M. & G. 193.

Where some of the subscribers had been induced to execute a subscription contract through the misrepresentations of others, L. J. Turner thought that in the winding-up they had a right to insist that the deed should not be enforced against them, even if the contributions from the other subscribers should not be sufficient to pay all the debt. *Dover, Hastings, &c. R. Co., Carew's Case* (2), 7 D. M. & G. 43.

Mutual liability of promoters.

3. Promoters of a company are not liable to one another for expenses incurred towards the attainment of their common object, except expenses for which they are all liable or to which they have undertaken to contribute (1). Contribution towards such expenses can be enforced either by action at law, suit in equity, or under a winding-up order (2).

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(1) *Holmes* v. *Higgins*, 1 B. & C. 74; *Goddart* v. *Hodges*, 1 Cr. & M. 33; *Watson* v. *Curzon*, 15 M. & W. 532; *Parkin* v. *Fry*, 2 C. & P. 311. This principle was recognized by the Companies Act, 1844, s. 23, which prohibited a provisionally registered company from making calls.

Suit by one promoter against others.

In *Denton* v. *Macneil*, L. R., 2 Eq. 352, Lord Romilly seemed to think a bill to compel contribution in such a case might be maintained on the ground of there being a partnership concern; but he dismissed the bill in that case, as the plaintiff only asked for contribution towards the expenses borne by him, and did not ask that an account should be taken of all expenses incurred, and that they should be borne *pari passu* by all concerned. Bills by subscribers to an abortive company for the apportionment of expenses actually incurred, and the return to them of their deposits, after deducting their share of expenses, were maintained in *Apperley* v. *Page*, 1 Phil. 779, and *Cooper* v. *Webb*, 15 Sim. 454.

A bill for contribution from persons who had joined together with the plaintiff for the purpose of forming a company was dismissed, but without costs against some of the defendants, as they had from their conduct furnished a colour to a right to have an account. *Hamilton* v. *Smith*, 28 L. J., Ch. 404.

Promoters are not liable in winding up proceedings.

A member of a provisional committee of an abortive company is not liable to contribute on the winding-up of the company. *Norris* v. *Cottle*, 2 H. L. 647, affirming *Wolverhampton, &c. R. Co., e.p. Cottle*, 19 L. J., Ch. 366; 2 M. & G. 185; *Hutton* v. *Thompson*, 3 H. L. 161; *Bright* v. *Hutton*, 3 H. L. 341, where it was laid down that the test of liability in these cases in equity is liability at law. This reversed: *Hutton* v. *Upfil*, 2 H. L. 672; and the following cases founded upon it:—*North Metropolitan Junction R. Co., e.p. Nicholay*, 15 Jur. 420; *Metropolitan R. Junction Co., e.p. Markwell*, 5 De G. & Sm. 528; *Direct Shrewsbury and Leicester R. Co., e.p. Brittain*, 1 Sim., N. S. 281; *Direct Birmingham, &c. R. Co., e.p. Sichell*, 1 Sim., N. S. 187; *Falmouth R. Co., e.p. Clarke*, 20 L. J., Ch. 14.

A fortiori persons who have agreed to take shares in a company which never comes into existence are not liable for the preliminary expenses. *India and Australia Steam Packet Co., e.p. Maudslay*, 20 L. J., Ch. 9; *Direct Birmingham and Brighton R. Co., e.p. Walstab*, 20 L. J., Ch. 58.

T., as a member of a provisional committee of an abortive company, joined in appointing a managing committee. He subsequently took an active part and contributed money towards liquidating expenses incurred by the managing committee. He was not liable to contribute in the winding-up of the affairs of the managing committee. *Direct Exeter, &c. R. Co., e.p. Tanner*, 5 De G. & Sm. 182.

Par. 3 (1).

An allottee of shares, who had acted as provisional director, was not made a contributory. *Hereford and Merthyr R. Co., Maitland's Case*, 3 Giff. 28.

B. allowed his name to be placed on the list of the provisional committee of a projected railway company. Shares for which he did not apply were allotted to him. He declined the shares and requested to have his name removed from the provisional committee. The scheme was abandoned, and it was resolved by the committee that its members should contribute to the preliminary expenses. B. paid several sums of money towards the expenses; and, on the winding-up of the concern, he was not made a contributory. *Direct Exeter R. Co., e.p. Besley*, 2 M. & G. 776; 3 M. & G. 287, overruling same case, 19 L. J., Ch. 362, and *e.p. Hole*, 3 De G. & S. 241; and *Direct West End and Croydon R. Co., e.p. Studley*, 19 L. J., Ch. 417.

A. went to a meeting for the purpose of getting up a railway company, but left before buisness commenced and refused to have anything to do with the company. Some time afterwards, under threat from the secretery, he paid a sum towards the expenses under protest. He was not made a contributory on the winding-up of the concern. *Direct Exeter R. Co., e.p. Hall*, 19 L. J., Ch. 386; 3 De G. & S. 214.

Action at law in cases of joint liability.

(2) In the following cases actions have been successfully brought for contribution:—*Boulter* v. *Peploe*, 9 C. B. 493, for rent of committee-room; *Balard* v. *Hawes*, 22 L. J., Q. B. 443; 2 E. & B. 287, for fees of an engineer; *Edgar* v. *Knapp*, 7 Jur. 583, for solicitor's fees.

The defendant executed the subscription contract required for the purpose of getting a railway act, and by it covenanted that he had subscribed the sum set opposite to his name for the purpose of establishing a railway company, and he authorized the provisional directors to abandon the scheme if they thought fit, and he covenanted to pay the sum subscribed. An equitable plea that the company had abandoned the scheme was no answer to an action on the covenant. *Aldham* v. *Brown*, 29 L. J., Q. B. 33; 7 E. & B. 164.

By a subscription contract each of the subscribers covenanted to the extent of his subscription, and undertook that, in the event of the application not being successful, they would pay all the expenses incurred with a view to the establishment. The subscribers thereby empowered a committee to manage and dispose of the capital raised in pursuance of the above covenant. An action was maintained on the covenant against a subscriber. *Millet* v. *Browne*, 27 L. J., Ex. 256; 2 H. & N. 837.

Suits in equity in case of joint liability.

One of the provisional directors of a projected railway company which was not carried into execution was sued by the engineer, and judgment was recovered against him in that action. Upon a bill filed by him against his co-directors for contribution, it being objected that the suit ought to have been for the general administration of the partnership affairs: Held, that the suit was properly framed. *Lefroy* v. *Gore*, 1 Jo. & Lat. 571.

The test of liability to contribute is liability at law. *Ib.*

In that case it was held that it was no objection to a suit for contribution by a person who had been compelled to pay a sum against others who were equally liable with him that it did not seek a general account; but compare *Denton* v. *Macneil*, note (1).

Parties to such suits.

The provisional committee had incurred joint liabilities, and had certain joint property. A bill was filed by one of them for an account and to apply the funds in discharge of the liabilities. A demurrer for want of parties was allowed, all the provisional committee not having been made parties. *Sharp* v. *Day*, 16 L. J., Ch. 1; 1 Phill. 771.

Persons who have agreed to contribute are put on list of contributories.

Where there was only one debt a person not liable directly to the creditor, but liable to contribute to the person liable, was put on the list of contributories. *Midland Union, &c. R. Co., Norbury's Case*, 5 De G. & Sm. 428.

A person who had signed the subscription contract but had not been allotted shares, was placed on the list of contributories. *Staffordshire and Shropshire R. Co., e.p. Bowen*, 20 L. J., Ch. 856; *Grand Trunk R. Co., e.p. Apps*, 10 L. J., Ch. 409.

Persons who had lent money to satisfy the Standing Orders of the House of Commons were liable to contribute to the preliminary expenses on the company proving abortive. *Clement* v. *Bowes*, 22 L. J., Ch. 1022; 1 Dr. 614.

Contracts to contribute.

4. Contracts to contribute towards preliminary expenses are construed strictly in favour of the contributories (1), and in the absence of express stipulation such contributories are liable equally (2).

Construction of such contracts.

(1) By the terms of certain resolutions on the formation of a company for the purpose of founding a colony, certain trustees had the control of an expedition to explore the district; and it was resolved that the expenses of the expedition should not exceed a given sum, and that the subscribers were not to be liable beyond that amount. On the arrival in the country of the persons forming the expedition, they were seized and thrown into prison, and in consequence the project failed, and the loss greatly exceeded the fixed limit. It was held that the trustees could not call on the subscribers for contribution beyond that amount. *Gillan* v. *Morrison*, 1 De G. & Sm. 421.

Extent of liability.

(2) By an agreement whereby the plaintiff agreed to allow his name to be put on the list of a provisional committee, and the defendants undertook to indemnify him from all personal responsibility, and to hold him harmless against all costs, charges and expenses then incurred or to be incurred about the formation of the company: Held, that this was an indemnity against lawful claims only, and therefore did not apply to the costs incurred in defence of an action improperly brought against the plaintiff as a member of the provisional committee, and the costs of a chancery suit which arose out of the action. *Lewis* v. *Smith*, 19 L. J., C. P. 278.

The amount of contribution of each director is to be ascertained by dividing the total loss by the number of directors who consented to act, and not dividing it by the number of those who were named as directors, nor by reference to their intended stake in the proposed company.

Par. 4 (2).

The plaintiff having released one of the directors in order to render him a competent witness in the trial at law: Held, that if such release was a proper act to be done in furtherance of the defence at law, his share of the loss was to be borne equally by all parties having the benefit of the defence at law, and inquiries were directed as to that point. *Lefroy* v. *Gore*, 1 Jo. & Lat. 571. Opposed to this, however, is *The Oxford and Worcester Extension R. Co., e.p. Morrison*, 20 L. J., Ch. 296: there it was held, that a person who had subscribed a contract binding him to contribute in respect of 100 shares, or having other shares allotted to him, became liable to contribute in proportion to the whole number of shares. A case, however, in all respects like this was reversed, as there was no contract to take shares. *Oxford and Worcester, &c. R. Co., Sharp's Case*, 1 De G., M. & G. 565. Compare par. 31.

Formation and status of companies.

5. Companies under the Act of 1862 are formed by registration (1), and are thereby incorporated (2). As, owing to the nature of its personality, an incorporated company cannot take an oath, where an affidavit is necessary in order to enforce its remedies, it can be made by an officer of the company (3); and, on the other hand, discovery on oath can be obtained from such officers (4).

(1) The formation of companies under the Act of 1862 is treated of in the first part of that act. The registration of previously existing companies, in the seventh.

In the formation of such companies as may now be formed by agreement (C. A. 1862, s. 4), the reader is referred to works on the law of partnership (Dixon on the Law of Partnership, chap. II.)

(2) This is by virtue of Companies Act, 1862, s. 18. But registered companies differ from ordinary corporations in some respects. See that section also, par. 36 (1).

Legal proceedings.

Where a limited company is plaintiff in certain cases security for costs will be required (C. A. 1862, s. 69). In suing an incorporated company the declaration need not state it to be a corporation nor how it became one; it is sufficient to sue it by its corporate name. *Woolf* v. *City Steam Boat Co.*, 18 L. J., C. P. 125; 7 C. B. 103.

Where a company appealed against a winding-up order, the court could not go into the question of the liability of the directors for improperly appealing; consequently the form of order was (the appeal being dismissed), that the costs of the respondents should come out of the estate, and no order was made as to the costs of the company. *National Savings Bank Association*, L. R., 1 Ch. 547.

Semble an incorporated company can execute a bond under 19 & 20 Vict. c. 108, in order to have county court action for trial against them removed to superior court. *Young* v. *Brompton Waterworks*, 31 L. J., Q. B. 14; 1 B. & S. 675.

A company incorporated by registration is within the jurisdiction of County Court Acts, and has the same rights as other persons to be sued there, and dwells, for the purposes of the County Court Acts, at the place where it carries on business. *Taylor* v. *Crowland Gas Co.*, 24 L. J., Ex. 233; 10 Ex, 288. A railway company has been held only to dwell at its principal office where the directors meet and the general business of the company is transacted. *Shiels* v. *Great Northern R. Co.*, 30 L. J., Q. B. 331; 7 Jur. (N. S.) 631. *Brown* v. *London and North Western R. Co.*, 4 B. & S. 326; 32 L. J., Q. B. 318; *Garton* v. *Great Western R. Co.*, E. B. & E. 837, 846.

Unincorporated companies.

Companies formed by agreement are in most respects (*a*) in the same position as ordinary partnerships; but, owing to the number of partners being larger, the difficulties which occur in carrying on their concerns are greater than in ordinary partnerships. In order to obviate some of these, the property of such companies is often vested in trustees, and contracts are made by trustees individually which are intended for the benefit of the company.

Suits and actions by and against trustees for unincorporated companies.

A servant who had entered into a bond with trustees for the company for proper performance of his duty was sued by the trustees. *Metcalf* v. *Bruin*, 12 East, 400.

Persons who have entered into contracts, the benefit of which is really intended for companies, can sue and be sued on such contracts. *Clay* v. *Southern*, 7 Ex. 717; 21 L. J., Ex. 202.

It is difficult to reconcile *Davies* v. *Hawkins*, 3 M. & S. 493, with the above cases. There the directors had power to appoint two persons to be trustees and carry on the business. They appointed only one, in whom the property was vested. It was held that he could not sue one of the shareholders for goods supplied to him.

Liability of such trustees to the shareholders.

A bill was filed by a person who claimed a definite interest in a mine and mining adventure. It stated that the defendants, who had been the legal owners, had, unknown to the plaintiff, but with the consent of the other co-partners, and after fully accounting to them for their shares in the profits, sold and conveyed the mine and received the consideration partly in money, partly in shares of a company formed to work it. The bill prayed that the defendants might either account for his proportion of the profits made by the sale, or, at his election, transfer to him a proportionate number of shares. A demurrer for want of parties was overruled. *Mare* v. *Malachi*, 1 My. & Cr. 559.

In the case of an insolvent partnership not formally dissolved a bill may be filed by one or more on behalf of the rest against the governing body to have the assets collected and applied towards the payment of the debts without seeking to ascertain the rights and liabilities as between themselves, but leaving them open to future litigation. *Richardson* v. *Hastings*, 13 L. J., Ch. 142; 7 Beav. 323.

(*a*) Ordinary partnerships and unincorporated companies differ in the following respects: (1) A partner is the agent of all the members of his firm — one shareholder is not the agent of the others. See *post*, pars. **25, 36.** (2) A partner cannot generally substitute another person in his place—a shareholder can. See *post*, par. **36** (3). (3) Partnerships consisting of more than seven members can be wound up under the Companies Act, 1862, s. 199, and are exempted from the jurisdiction of the Court of Bankruptcy. (32 & 33 Vict. c. 71, s. 5.)

Par. 5 (2).

A bill by some of the officers of a privateer, on behalf of themselves and the rest of the crew, against the owner for an account was sustained. *Good* v. *Blewett*, 13 Ves. 397.

Some members of a lodge of freemasons might sue on behalf of themselves and the others for delivery up of dresses, &c. *Lloyd* v. *Soaring*, 6 Ves. 773.

Contracts with officers for the time being.

Attempts have also been made to get rid of the disabilities of unincorporated companies with respect to legal proceedings by entering into contracts in the name of an officer for the time being, but such attempts have always failed.

An action on covenant was brought against B., the chairman of a company. The declaration alleged an agreement was sealed with the seal of the chairman of a company for and on behalf of the company, the said S. for the time being acting as chairman. The action would not lie. *Hall* v. *Bainbridge*, 1 M. & Gr. 42.

A bill of exchange payable to the treasurer for the time being of a company is invalid. *Yates* v. *Nash*, 29 L. J., C. P. 306; 8 C. B., N. S. 306. An instrument undertaking to pay the secretary for the time being of an insurance society was held not to be a promissory note, as not disclosing the name of any certain payee. *Cowie* v. *Stirling*, 25 L. J., Q. B. 335; 6 E. & B. 333; *Storm* v. *Stirling*, 25 L. J., Q. B. 298; 3 E. & B. 832.

Covenant cannot be maintained against the chairman of the board of directors upon a deed under the seal of a former chairman, though sealed by him for and on behalf of the company. *Hall* v. *Bainbridge*, 1 M. & Gr. 42. Though in *Phelps* v. *Lyle*, 10 Ad. & El. 113; 8 L. J., Q. B. 236, it seems to have been thought that directors, as such, could enter into a contract and sue on it. Compare *Woolmer* v. *Toby*, 4 R. C. 713; *Hybart* v. *Parker*, 4 C. B., N. S., 209; 27 L. J., C. P. 120.

Oaths on behalf of companies.

(3) An adjudication was made in bankruptcy on the petition of a company under sect. 87 of the Bankruptcy Act, 1861, the necessary oath having been made by the secretary. *Re Calthorp*, L. R., 3 Ch. 252.

By virtue of sect. 52 of the Common Law Procedure Act, 1854, the affidavit to be filed in order to enable a defendant in an action at law to administer interrogatories to the plaintiff, under sect. 51, may be made on behalf of a company by attorney (17 & 18 Vict. c. 125, s. 52); and it has been decided that the same rule applies to applications for discovery of documents under sect. 51 of that act. *Kingsford* v. *Great Western R. Co.*, 4 N. R. 336. However, on sect. 60 of the same act, it was held that directors cannot be examined as to the debt of a company by a judgment creditor. See *post*, par. 29.

(4) For the mode of getting discovery from companies, see *post*, par. 29.

CHAPTER II.

CONTRACTS RELATING TO THE ISSUE OF SHARES.

Allotment (*a*).

6. To the prospectus is generally attached a printed form of application for shares in the company, addressed to the secretary or other person designated in the prospectus (1). A deposit of a certain sum per share applied for is commonly required to be made with the company's bankers. On a day named, or when sufficient applications have been received, the directors proceed to allot the shares, and to send letters of allotment to the selected applicants (2). A contract to become an original shareholder in the company is ordinarily constituted by application (3), allotment (4), and communication of the allotment (5). Such contracts are capable of being specifically enforced (6); they may be assignable (7).

Form of application.

(1) The form of application is in its essentials as follows:— "Gentlemen,—[having paid to your banker the sum of £ (*b*)] I request you to allot me shares in the company, and I agree to accept the same, or any less number that you may allot me, [subject to the articles of association,] [and I authorize you to apply the deposit of (*c*) in the payment of the preliminary expenses of the company (*d*).]"

A verbal application is sufficient. *New Theatre Co., Bloxam's Case*, 33 Beav. 529; 32 L. J., Ch. 519, 574; *Electric Telegraph Co. of Ireland, Cookney's Case*, 3 De G. & J. 170; 28 L. J., Ch. 12; 26 Beav. 6.

Letter of allotment.

(2) The letter of allotment is in its essentials in the following form:—"Sir,—In accordance with your application the directors

(*a*) It may be observed that all the cases in this and the three following sections flow from the simple principle that a valid contract requires the assent of two competent persons to the same thing, founded on a proper consideration.

(*b*) The words in brackets are appropriate if, as is usual, payment of a deposit per share applied for is required. As to the nature of deposits, see *post*.

(*c*) The words in brackets are intended to obviate such questions as to discrepancies between the prospectus and the articles of association as are mentioned in paragraph 15, *post*.

(*d*) The insertion of the words in brackets is rendered advisable by the decisions mentioned in paragraph 11 (1), *post*, that, in the absence of such an authority, deposits must be returned in full if the scheme proves abortive.

Par. 6 (2). have allotted you shares in the company [on which the sum of £ must be paid on or before the day of next (*a*)]."

Requisites of contract. (3) "The things required for the contract before the position of a shareholder is ascertained are these: first, that there should be an application for shares; secondly, that there should be an allotment of them; and, thirdly, that that allotment should be communicated and acquiesced in; and when all these things are done, the contract is complete and the person is a shareholder." Per Wood, V. C., *Saloon Steam Packet Co., e.p. Fletcher*, 37 L. J., Ch. 49; 16 W. R. 75. So, in some cases, the first offer is made by the directors, and the contract is completed by acceptance of their offer. This is not unfrequently the case where a fresh allotment of shares is offered to the existing shareholders of a company, as in *Leeds Banking Co., Addinell's Case*, L. R., 1 Eq. 225; 35 L. J., Ch. 75.

Allotment as evidence of acceptance. (4) "Allotment," says Mr. Lindley, "is the ordinary evidence of acceptance;" and it will be the necessary evidence if allotment is referred to *nominatim* in the application, as is the practically universal custom. In one case, B. had filled up a blank form of application, by which he requested directors to allot him 200 shares in a company, and agreed to accept that number or any less number which might be allotted him, and had paid a deposit of ten shillings per share to the company, for which he had received a banker's receipt. Very few shares were applied for, so that the company was wound up without commencing operations, and without any allotment of shares having been made. It was held by the Lords Justices that B. was not a contributory of the company, for that the contract between B. and the company was, that B. should accept the shares when an allotment of them should have been made, and that until allotment there was no complete contract by B. to take shares. "I cannot agree with the argument that, in all cases, anything in the nature of an appropriation would amount to an allotment. In the present case I think that the word allotment is to be taken in its ordinary sense of an allotment made with the usual formalities."—Per Turner, L. J., *Adelphi Hotel Company, Best's Case*, 2 De G., J. & S. 650; 34 L. J., Ch. 523, overruling M. R., 6 N. R. 16; vide also *Llanharry Hematite Iron Co., Tothill's Case*, L. R., 1 Ch. 85; 35 L. J., Ch. 120; *Chesterfield and Midland R. Co.*, 14 W. R. 721.

Communication of the allotment. (5) It has been supposed that the agreement is complete upon the allotment without notice to the applicant; *vide* Lindley on Partnership, 108. This was supposed to be proved by the *New Theatre Co. e.p. Bloxam*, 33 Beav. 529; 33 L. J., Ch. 519, 574. There B. applied verbally for shares, was told by the secretary that he might have them on payment of the deposit, and gave the secretary a cheque for the deposit on 100 shares, stipulating that the cheque should be returned in case he did not get the shares in a few days. The shares were allotted to B. two days after his application; but no letter of allotment was sent to him, nor was there any further acceptance on his part. It was held that there was a proper allot-

(*a*) The words in brackets are inserted, if, as is usually the case, payment of a further sum *per* share is required on allotment. A penny stamp duty has been imposed on letters of allotment. *Vide post*, 30 & 31 Vict. c. 90, ss. 20, 21.

ment to B., sufficient without further notice, and that, the company being wound up, he must be on the list of contributories.

Of *Bloxam's Case* Lord Cairns said, "That case was rather special. There had been a communication, by which Bloxam had been informed that if he did not receive an answer within a certain time he was to consider his application granted. But in the ordinary case, where a person applies for the maximum number of shares, undertaking to accept them or a less number, and the company is under no obligation to give him any, is not a reply to the application necessary?" L. R., 2 Ch. 530.

In *The Electric Telegraph Co. of Ireland, Coolney's Case*, 3 De G. & J. 170; 28 L. J., Ch. 12; 26 Beav. 6, C. verbally requested a director of a company to obtain him shares therein, and gave him a cheque for the deposit on them. The shares were allotted to C., but on the deed of settlement being tendered to him he refused to execute it. It was held that C. was bound by his agreement to take the shares.

In *Re The Peruvian Rs. Co. e.p. Wallis*, 18 L. T. 676, V. C. Malins said that notice to a person interested in getting up the company, through whom W. had applied for shares, was notice to W. of the application; but in this case it was not proved that W. had not express notice.

Where a notice of allotment was posted, addressed to the address given in the letter of application, and the applicant swore that he had not received it, and gave a probable mode of accounting for not having received it: held, that notice of allotment was not proved. *Constantinople and Alexandria Hotels Co., e.p. Finucane*, 17 W. R. 813.

A resolution "that the number of shares offered to each provisional committee-man shall be fifty, and that a letter shall be sent to each gentleman, requesting an answer, stating what number (if any) he is inclined to take," was communicated to C., who wrote to the secretary in reply, saying that he had made application for fifty shares and would be obliged if he would allot them to him. These circumstances constituted no contract to take shares. *Brighton, Lewes and Tunbridge Wells R. Co., e.p. Conway*, 5 De G. & Sm. 150.

It is difficult to reconcile *Littlehampton Steamship Co., e.p. Gregg*, 15 W. R. 82, with these principles, unless it can be put on the ground of acquiescence. See *post*, par. **32**.

Communication implied.

But the want of a letter of allotment, and of communication of the allotment, may be supplied by circumstances, as in *International Contract Co., Levite's Case*, L. R., 3 Ch. 36, and *Saloon Steam Packet Co., e.p. Fletcher*, 37 L. J., Ch. 49; 16 W. R. 75, where, under the circumstances, attendance as a director was held to supply the want of communication. From these cases must be distinguished that of *The National Assurance and Investment Association, e.p. Lord Abercorn*, 31 L. J., Ch. 828; 10 W. R. 548, where a resolution was passed that A., a director, should have £500 stock, the deed of settlement requiring a director to hold £100 stock. A. had notice neither of the deed or of the resolution. After A. had retired from the directorate, it was held, reversing the M. R., that there was no contract by A. to accept any stock, for that consent to become a director was

Par. 6 (5).

not consent to accept the necessary qualification for that office under the deed. On the authority of this case, it was decided in *The General International Agency Co., Chapman's Case*, L. R., 2 Eq. 567, that C., who had become one of the joint directors of the company, and applied for twenty-five shares, but had afterwards resigned his office, after which no shares were allotted him, could not be made a contributory of the company. So *Peninsula, West Indian and Southern Bank, Austin's Case*, L. R., 2 Eq. 435. In *Llanharry Hematite Iron Co., Tothill's Case*, L. R., 1 Ch. 85; 35 L. J., Ch. 120, T., a director, was held not bound by a resolution putting down his name as a subscriber for twenty-five shares, as he proved his want of knowledge of the resolution. In *Anglo-Danish and Baltic Steam Navigation Co., Salhgreen and Carroll's Case*, L. R., 3 Ch. 323, where there was an agreement by S. and C. to take shares, a resolution was passed appropriating other shares to them, but no communication of the appropriation was made to them. C. had acted as a director of the company, but had resigned before the resolution was passed. It was held that S. and C. were not bound to take the shares, and that their names must be removed from the register of the company.

Specific performance of contract.

(6) In *New Brunswick and Canada R. Co.* v. *Muggeridge*, 4 Dr. 686; 1 Dr. & Sm. 163; 30 L. J., Ch. 242, Kindersley, V. C., expressed his opinion that a suit to enforce such a contract might be maintained by a company, and dismissed a plea to a bill for that object, though he dismissed the bill on the ground that the defendant was induced to enter into the contract by misrepresentation. In *Oriental Inland Steam Co.* v. *Briggs*, 31 L. J., Ch. 241, Lord Westbury had no doubt as to the jurisdiction of the Court to give specific performance of a contract of this kind, though he refused to do so in that case on the ground that the contract had been varied by the letter of allotment. In *Sheffield Gas Co.* v. *Harrison*, 17 Beav. 294, a bill for a similar object was dismissed, because specific performance was nugatory, as any shareholder could retire from the company in fourteen days. In *Columbine* v. *Chichester*, 2 Phill. 27, it was considered that specific performance of the contract was, under the circumstances, enforceable; and, in *Bluck* v. *Mallalue*, 27 Beav. 398, that it would be nugatory. In *Ferguson* v. *Wilson*, L. R., 2 Ch. 77, the plaintiff, by his bill, prayed specific performance of a resolution of the board of directors, by which he alleged that he was entitled to have a certain number of shares allotted to him. He also prayed that if it should appear that all the shares had been allotted, the directors might transfer a sufficient number of their own shares to him, or else be answerable in damages. All the shares had been allotted before the filing of the bill. It was held that relief by specific performance was impossible, and that this being so, the claim for damages failed also; and that the prayer that the directors might transfer some of their own shares to the plaintiff was merely a prayer for damages in another shape.

Scrip.

(7) Previously to the formation of companies, it is frequently the practice of promoters to issue scrip certificates, which entitle the holder to shares in the company when it is formed, without necessarily imposing any obligation on him to take such shares. This mode of getting up a company is generally applied to companies formed by special act, which are not treated of in this work; and

such contracts would not be binding on a company formed under the Act of 1862, unless they had special power to adopt and did adopt them; but there is nothing to prevent a company's having such power.

Where the articles of association of a company provided that the directors, instead of entering allottees of shares on the register of members, might issue to them scrip certificates entitling the holders to the shares therein named, subject to the payment of the instalments at the times therein mentioned; that the word "shareholder" should include scripholder; that the shares for which scrip was issued should be transferable by delivery of the scrip, and the holder of the scrip should be the only person recognized as entitled to the shares; and that the scripholder on surrendering his scrip should be entitled to be entered on the register of members in respect of the shares mentioned in the scrip certificates. On the winding-up of the company scripholders were not made contributories. *Littlehampton Steamship Co., Ormerod's Case*, L. R., 5 Eq. 110; 37 L. J., Ch. 111; *e.p. Ellis*, 34 L. J., Ch. 237; 2 De G., J. & S. 251.

The holder of a scrip certificate is not accountable to the person to whom it was issued to indemnify him for loss on account of his original contract. *Jackson* v. *Cocker*, 4 Beav. 59.

It was held that a railway scrip certificate was not an "accountable receipt" within 11 Geo. 4 & 1 Will. 4, c. 66, s. 10, and the forgery of it did not amount to felony. *Clark* v. *Newsam*, 16 L. J., Ex. 296; 1 Ex. 131.

See, further, *Shelford on Railways*, 4th ed., vol. ii., pp. 29, 30.

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7. The applicant may withdraw his application for shares at any time before communication of the allotment is made to him (1). If the allotment is delayed for an unreasonable time, the applicant has a right to refuse to accept it (2).

Right to withdraw before acceptance.

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(1) So decided in *Ramsgate Hotel Co.* v. *Montefiore*, L. R., 1 Ex. 109; 35 L. J., Ex. 91, and in *Cardiff and Caerphilly R. Co., Gledhill's Case*, 7 Jur., N. S. 981. In these cases the withdrawal was before the allotment made. In *National Savings Bank Association, Hobb's Case*, L. R., 4 Eq. 9; 36 L. J., Ch. 748, H. signed an application for ten shares, and delivered it to the agent of the company on August 28, and at the same time paid the deposit. On September 4 the directors allotted ten shares to H., entered his name in the allotment book and sent the letter of allotment to their agent. It was held, that H. never became a shareholder. "If a person applies for shares in a company, and the directors write down his name in the allotment book, they may at any time before the allotment has been communicated to the allottee alter or cancel the allotment; if it were not so, a mere accident might irrevocably bind the company. I am of opinion that an offer does not bind the person who makes it until it has been accepted, and its acceptance has been communicated to him or his agent."—Per Lord Romilly, M. R., who relied on Sir T. Plumer's remarks in *Martin* v. *Michell*, 2 Jac. & W. 413, 728, and distinguished the present case from *Dunlop* v. *Higgins*, 1 H. L. Ca. 381, on the ground that there the post-office was the common agent of both

Withdrawal of application before notice of allotment.

Par. 7 (1).

parties, whereas here H. had not authorized the agent of the company to accept the allotment on his behalf. In *Exhall Coal Mining Co., e.p. Miles*, 34 L. J., Ch. 123, M. applied for 200 shares and paid 500*l.* thereon, as a call of 2*l.* 10*s.* per share. Before allotment he requested that he might have only fifty shares, with their whole nominal value of 10*l.* paid up. The directors agreed and sent M. certificates for fifty paid-up shares. M. afterwards discovered that he was on the register for 200 shares, and requested that this might be corrected. The directors thereupon declared the 150 shares forfeited for non-payment of calls. On the winding-up of the company it was held, affirming the M. R., that M. had notified his change of mind before he was bound legally or equitably, and was never owner of more than fifty shares. "The resolution which the company passed for the forfeiture of the remaining shares, though inoperative in itself, was a device adopted by it for setting the matter right."—Per Turner, L. J.

Communication of allotment delayed for an unreasonable time.

(2) G. applied for shares on June 8, no allotment was made till November 23; G. then refused to accept the shares. It was held, that allotment must be made within a reasonable time, that the interval from June 8 to November 23 was unreasonable, and that G. was not bound to accept the shares or to pay a call on them. *Ramsgate Hotel Co.* v. *Goldsmid*, L. R., 1 Ex. 109; 35 L. J., Ex. 91.

So *Exeter, Plymouth and Devonport R. Co.* 3 De G. & Sm. 234, where the interval was from October 20 to December 15, and the circumstances of the company had much deteriorated during that time; and *Irish West Coast R. Co., Carmichael's Case*, 17 Sim. 163; 20 L. J., Ch. 12, where the Vice-Chancellor said, "all such applications are made upon an implied condition that they shall be answered promptly, or otherwise, that the party applying shall not be bound by his application."

In *Universal Banking Corporation, Gunn's Case*, L. R., 3 Ch. 40; 37 L. J., Ch. 401, where, five months after application for shares and payment of deposit, G. applied to know whether the shares had been allotted, and was told that the matter should be looked into, and heard nothing more till two months later the company was wound up: it was held by Rolt, L. J., affirming Stuart, V. C., 36 L. J., Ch. 800, that there was no binding contract between G. and the company, and that he could not be placed on the list of contributories, although his name was on the register.

In *Bowron, Baily & Co., Baily's Case*, L. R., 3 Ch. 428; 37 L. J., Ch. 255, B. applied for shares on October 14; shares were allotted to him on February 1, and on February 14 B. declined to accept them. Twenty months later B. applied, under C. A., 1862, s. 35, to have his name removed from the register of the company. It was held by Wood, V. C., first, that B. had a right to refuse to accept the shares after the delay in allotment; secondly, that as he had at once repudiated the shares, his subsequent delay in taking active steps was no bar to the right he had asserted of having his name removed from the register.

In *Peruvian Railways Co., e.p. Robinson*, 17 W. R. 455, R. applied for shares in the P. Co., at the request of the I. Co.; he was to hold them in trust for and to be indemnified by that company; an allotment was made and communicated to the I. Co., but not to R. till

shortly before notice was given to him that his name would be placed on the list of contributories: his name was removed from the list.

Waiver of delay.

If a person acts on the allotment, though there may have been great delay in its communication to him, he is bound by the contract. Where an allotment of shares in the P. Co. was made to C., who had applied for them as trustee for the I. Co.; no communication was made to him till the secretary of the I. Co. took him transfers to execute in blank, which he did on the faith that the I. Co. had fully paid the amounts of the shares; C. was made contributory of the P. Co. *Peruvian Railways Co., e.p. Crawley*, 17 W. R. 455.

But where a letter of allotment notified that a deposit was to be paid by a certain day, that scrip certificates would be delivered to him in exchange for that letter and the banker's receipt, and that the shares would be forfeited if not paid within the specified time; the allottee's name was placed on the register, but he did not act further in the matter. In an action for calls it was held that he was not a shareholder. *Waterford R. Co.* v. *Pidcock*, 22 L. J., Ex. 146; 8 Ex. 279. Compare *Port of London Ship Owners Assurance Co., e.p. Yelland*, 21 L. J., Ch. 852.

The directors of a joint stock company offered their reserved shares to shareholders and the executors of deceased shareholders in proportion to the amount of their shares. The form of application sent to the executors of one of the deceased shareholders was filled up by M., a relative of the surviving executrix, without her authority, and he therein asked for new shares to be allotted to himself; the directors allotted the additional shares to the executors, but sent notice of the allotment to M.; M. wrote a letter, thanking them for the shares, but did not pay the deposit on them. Held there was no complete contract between M. and the company, and M. was not made a contributory. *Leeds Banking Co., e.p. Malorie*, L. R., 2 Ch. 181; 36 L. J., Ch. 141.

Variation of contract.

8. If the letter of allotment is not a simple acceptance of the letter of application, but introduces a new term into the contract, or the shares allotted differ from those asked for, there is no binding contract concluded; but the letter of allotment constitutes a new offer, which the applicant may at his option accept or decline (1). The result is similar if the offer of shares proceeds from the company, and the new term is introduced by the reply of the person to whom the offer is made (2).

By letter of allotment.

(1) In *Duke* v. *Andrews*, 2 Ex. 290; 17 L. J., Ex. 231; and *Claplin* v. *Slack*, 4 Ex. 403, the words "not transferable" were introduced into the letter of allotment. It was held that there was no binding contract, as the proposal was absolute, while the letter of allotment introduced a qualification. So *Wontner* v. *Shaip*, 4 C. B. 404: distinguishing *Hutton* v. *Upfill*, 2 H. L. Ca. 674. In *Wolver-*

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hampton, Chester & Birkenhead R. Co., e.p. Roberts, 1 Dr. 204; 22 L. J., Ch. 218, R. applied for 100 shares and received an allotment of 25 shares. On this, among other grounds, it was held that was no valid allotment of shares to and acceptance of them by R. *E.p. Slack*, 22 L. J., Ch. 218, in the same company, was a similar case.

In *Oriental Inland Steam Co.* v. *Briggs*, 31 L. J., Ch. 241, B. applied for 150 shares, and undertook to accept the same or any less number, to pay the calls thereon, and to sign the articles of association when required. B. at the same time paid a deposit of 2*s.* per share to the company's bankers, for which he obtained a receipt. The shares were allotted to B., who received the following reply from the secretary:—"I am desired to inform you that 150 shares have been allotted to you. The bankers' receipt must be exchanged, when required, for a share certificate under the seal of the company, and the memorandum and articles of association of the company must be signed by the party to whom the shares are allotted, and in default thereof the shares and deposit will be forfeited to the company." The articles of association contained no clause authorizing the forfeiture of calls in such a case. B. refused to sign the articles of association or to pay calls on the shares, and the company filed a bill for specific performance of his contract to take the 150 shares; but it was held by Westbury, L. C., that the contract had been varied by the letter of the secretary, and that the bill could not be sustained. "It was said," said his lordship, "that what was added to the letter was nothing more than an expression of what the law annexed, and therefore it might be brought under the common maxim, *expressio eorum quæ tacite insunt nihil operatur*. That interpretation of the letter could not be accepted; there was no law which would have authorized this addition to be made to a simple contract, that in default of the things specified being done, the shares and deposit would be forfeited to the company." His lordship also refused to listen to the argument that the variations were unauthorized additions by the secretary. "If the individual to whom a proposition was made returned an answer by the hand of an agent, and the agent in that answer embodied, whether with or without authority, certain things accompanying the acceptance which were not warranted by the original proposal, that individual was not at liberty to say that what the agent had added was not warranted by his instructions, and therefore the acceptance, which was by his direction, must be taken free and liberated from the addition which the agent had thought proper to make." So in *Direct London and Birmingham R. Co., e.p. Capper*, 19 L. J., Ch. 394, a notice in the letter of allotment that if the deposit was not paid by a certain day, the allotment would be null and void, was held to invalidate the contract.

In *Leeds Banking Co., Addinell's Case*, L. R., 1 Eq. 225; 35 L. J., Ch. 75, the directors of the bank offered reserved shares to the shareholders in proportion to their shares, and asked if they wished for more. A. was offered four shares as his proportion; he accepted them and asked for more. The directors allotted him four more. The reply contained a clause, not in the circular containing the first offer, that, if the amount was not paid by a day named, the allotment would be null and void. Nothing further was done, and no payment was made. It was held, on the winding-up of the company, that a con-

tract was constituted as to the first four shares by offer and acceptance; but that a new term was introduced by the forfeiture clause into the contract as to the latter four shares, and that no contract was constituted in respect to them. *Warren's Blacking Co., Pentelow's Case*, 17 W. R. 267, was a similar case.

Where a letter of allotment contained the words we "hereby allot you ten shares in the company, on your paying on or before the 11th instant the sum of twenty pounds," it was held to create a condition; but in *Re Aberaman Iron Works, Peek's Case*, L. R., 4 Ch. 532; 17 W. R. 312, 508, the words "the directors have allotted you eighty shares in the company, on which shares 5*l.* per share must be paid on or before the 15th instant," were held not to introduce a new term.

Allotment of shares differing from those applied for.

R. applied for shares in a company the capital of which was doubled before they were allotted to him; he was not made a contributory. *Merionethshire Banking Co., e.p. Rye*, 3 Jur., N. S. 460. Compare cases on "Amount of Misrepresentation sufficient to avoid Contracts to take Shares," *post*, par. 15.

A prospectus was issued for the establishment of a company. A. B. took shares and paid his deposit. Afterwards, at a meeting of shareholders, the scheme was greatly varied, the company being united to an existing company, and the capital doubled. A. B. was present, but took no part. The company was formed on the new scheme and failed. A. B. was not a contributory. *British and American Steam Navigation Co., e.p. Goldsmid*, 16 Beav. 262. *Meyer's Case*, 16 Beav. 382, in the same company, was similar, except that Meyer took one share in the new company; his other shares were professed to be cancelled. He was made a contributory in respect of one share only.

Where a person applied for shares in a company, the objects of which were changed by its ceasing to be a sick benefit society, he was not made a contributory. *Amazon Life Insurance Co., e.p. Blackburn*, 18 L. J., Ch. 409. This case was reversed on appeal on fresh evidence.

Where a person has applied for shares on the faith of a particular prospectus, and there is afterwards any substantial alteration, the person so applying is discharged from any further liability in respect of his application. *Great Cumbrian Mining Co., Richardson's Case*, 27 L. T. 197.

G. applied for shares in a company when the shares were 20*l.* shares before allotment. Without his knowledge the shares of the company were consolidated and made 40*l.* shares. 40*l.* shares were allotted to him. He was made a contributory for 20*l.* shares. *European Central R. Co., e.p. Gustard*, June 3, 1869.

By answer to offer of shares.

(2) In *Leeds Banking Co., Howard's Case*, L. R., 1 Ch. 564; 36 L. J., Ch. 42, the directors offered forty reserved shares to H., who accepted them on the condition that he should be allowed to delay payment till a certain day. It was held that this insertion in H.'s acceptance prevented a binding contract being constituted, and that acceptance of H.'s condition by a body to whom the directors had improperly delegated their powers could not constitute a valid acceptance thereof. In *Birmingham, Oxford and Reading R. Co., Amon's Case*, 1 Sim., N. S. 394, and *Eastern Counties R. Co., Mainwaring's Case*, 2 D., M. & G. 66, Lord Cranworth doubted whether a

Par. 8 (2). direction by the person to whom shares were offered, that they should be "reserved" for him, constituted acceptance thereof, and in the first case directed an issue to try the question.

Conditional contracts (*a*).

9. So where the application is made for shares to be allotted on some condition to be performed by the company, the allotment is not binding on the applicant unless the condition be complied with (1); but the applicant cannot repudiate his contract on the ground of the company's failing to perform a collateral agreement (2).

Conditional applications.

(1) R. filled up an application for shares in the usual form, which the agent of the company forwarded to the directors, with a letter from himself stating that the application was made on condition of R. being appointed local manager. Shares were allotted, but in consequence of his not being able to pay the deposit the directors refused to give R. the appointment. It was held that the application was conditional, and that R. was not a shareholder. *Universal Banking Co., Roger's Case*, L. R., 3 Ch. 633. W. applied in writing for shares in a joint stock company on condition that he should have the supplying of certain articles required by the company. Shares were allotted to him; but the company came to no definite arrangement as to his supplying the articles; he did not sign the articles of association, and paid no deposit. His name was removed from the list of contributories. *Re The Sunken Vessels Recovery Co., Wood's Case*, 3 De G. & J. 85; 20 L. J., Ch. 898.

If the performance of the condition is *ultra vires* of the directors, or becomes impossible from circumstances, the applicant is not bound to take the shares. *Re Richmond Hill Hotel Co., Pellatt's Case*, L. R., 2 Ch. 527; 36 L. J., Ch. 613. Where shareholders in a bank, in anticipation of a transfer of the assets and liabilities to another bank, which arrangement could not be carried out on account of the refusal of the court to sanction it, applied for shares in the second bank, which were allotted to them, they had their names removed from the list of shareholders under "The Companies Act, 1862," s. 35. *Re The London and Exchange Bank, e.p. Collison*, 15 W. R. 778. Again, where a person applied for shares as part of a scheme of amalgamation which could not be carried out, as being *ultra vires*, his name was removed from the list of contributories. *Re The Oriental Banking Co., e.p. Alabaster*, 16 W. R. 134.

P. and H. agreed to transfer shares in a company to F., to take 500 new shares each, part of the agreement being that F. was to join the board of directors; this he refused to do. P. and H. refused to take new shares; they were not made contributories in respect of

(*a*) Conditions are sometimes imposed on allottees of shares to be performed before they are admitted to the rights of members. Such conditions do not of necessity invalidate the contracts, as the applicants may be affected with notice from their being contained in the articles of association, or may have assented to perform them. See *post*, C. A. 1856, Table B (1).

the new shares. *London, Hamburgh and Continental Exchange Bank, Preston's Case*, 15 L. T., N. S. 496.

A shareholder in company C. applied for shares in company A. on the footing of an arrangement for amalgamation, under which the assets and liabilities of company C. were to be taken by company A. The fact that the amalgamation was *ultra vires* did not make the allotment nugatory. *London and County General Agency Co.*, L. R., 1 Ch. 503.

Applications with collateral contracts.

(2) E. applied for shares on the faith of an agreement with a promoter (subsequently ratified) that he should only pay 30*s.* per share in cash, and that the further calls should be set off against goods. E. paid a deposit of 10*s.* per share. Shares were allotted to him, and he paid a further sum of 20*s.* per share. He received the certificate and was entered on the register of shareholders. No goods were ordered. E. was placed on the list of contributories on the winding-up of the company. *Re Richmond Hill Hotel Co., Elkington's Case*, 2 Ch. 511; 36 L. J., Ch. 593. A., upon his appointment as agent to a company, agreed to take shares upon terms that payment for them should be deducted from his commission as agent. The company soon dismissed him. It was held that the cancellation of the appointment, whether justifiable or not, could not operate as a cancellation of A.'s agreement to take shares. *Re Life Association of England (Limited), Thomson's Case*, 34 L. J., Ch. 525. *A fortiori*, a person who had taken shares in part payment of the price of a patent was made a contributory, though the rest of the purchase-money had not been paid. *Patent Carriage Co., Gore and Durant's Case*, 2 Eq. 349.

An allottee cannot incorporate as a condition into his contract a statement in the prospectus that the capital is of a certain amount; *Universal Salvage Co., Sharpus's Case*, 3 De G. & S. 49; or that the business will not be commenced till a certain proportion of the shares have been taken up. *North Staffordshire Steel, &c. Co., e.p. Ward*, L. R., 3 Ex. 180.

Implied contracts.

10. The subscribers of the memorandum of association upon its registration are deemed to have agreed with the company to take the number of shares placed against their respective names (1), and if no number is specified in respect of which one subscribes, he is a subscriber for one share (2); but in no other case will a contract be implied without the express consent of both parties (3).

(1) This is under sect. 23 of "The Companies Act, 1862," by virtue of which, before registration, there is a contract between the subscribers. No cases have arisen as to their respective rights and remedies.

This contract will not be satisfied by the allotment to the subscriber of fully paid-up shares which the company has agreed to give to some one else. *Re The South Blackpool Hotel Co., Migotti's Case*, L. R., 4 Eq. 238; 36 L. J., Ch. 531. Nor of paid-up shares

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agreed to be allotted to him as promoter. *Re The London and County Coal Co., Bennet's Case*, 15 W. R. 1058; and *Cosmopolitan Life Insurance Co, Nicholl's Case*, 24 Beav. 639.

The first issue of shares in a company was exhausted without including shares in respect of which C. had signed the memorandum. C. was made a contributory. *Tiddyn Sheffrey Slate Quarries Co., e.p. Cleve*, 20 L. T., N. S. 105.

D. signed the memorandum of association in respect of twenty-five shares. A larger number of shares were allotted to him fully paid-up in respect of his shares in a company, the business and assets of which were taken over by the new company. D. was not made a contributory. *China Steam Ship Co., Drummond's Case*, July 26, 1869.

Semble, a subscriber in respect of a number of shares of a nature which the directors cannot allot him, such as paid-up shares, though specified as such on the memorandum, will be held to have contracted to take ordinary shares. *Re The South of France Vine Growing Districts Co., e.p. De Beville*, 38 L. J., Ch. 18; L. R., 7 Eq. 11. If, however, he subscribes in respect of a number of such shares and also in respect of a number of ordinary shares, he will be held bound only to take the latter. *Ib.* But it is not necessary in all cases that he should become the registered holder of the shares himself. Where a person had subscribed for 100 shares, and forty-two were allotted to him and twenty-nine to each of his two partners, it was held that the contract to take shares was satisfied. *Re The Masons' Hall Tavern Co., e.p. Noakes*, 16 W. R. 1135; 37 L. J., Ch. 470.

The contract is satisfied by the allotment of a larger number of shares. *Re Freen & Co., e.p. Elliott*, 15 W. R. 166.

P.'s name was placed on the list of subscribers for 1,350 shares. By the articles of association an agreement was ratified under which 1,500 paid-up shares were to be given to P. in consideration of a good-will and stock in trade. The Master of the Rolls held, that P. was entitled to an inquiry as to what was the value of the property sold, and to be allowed such value, but no more, towards payment of his shares. *Heyford Co., Pell's Case*, 17 W. R. 1054.

It is not necessary that his signature should be attached to the copy that is filed. *New Brunswick, &c. Railway and Land Co.* v. *Boore*, 3 H. & N. 249; 27 L. J., Ex. 330.

P. had signed a memorandum of association with respect to 1,000 shares, but another copy was registered. A prospectus had been circulated stating that P. had subscribed for that number of shares in addition to 6,000 paid-up shares. P. was made a contributory. *Oola Mining Co., Palmer's Case*, Ir. R., 2 Eq. 573.

S. had signed the same memorandum, but the court thought that in his case there was not sufficient evidence that he intended to take shares, and he was not made a contributory. *Smyth's Case, Ib.*

(2) This was expressly provided by the corresponding section 8 of the Act of 1856, and is stated to be so by Lord Romilly in *De Beville's Case*, just referred to.

By becoming a director.

(3) Thus, where persons have acted as directors they have not been held bound to take the number of shares requisite to qualify themselves for that office.

A person by agreeing to become a director does not agree to take the shares necessary to qualify himself for that office. *National*

Assurance and Investment Association, e.p. Abercorn, 31 L. J., Ch. 828; *e.p. Cotterell*, 32 L. J., Ch. 67. A director of a railway company signed the memorandum and articles of association in respect of twenty-five shares. He applied for fifty shares, which was the number requisite to qualify him for the office. No communication of an allotment was made to him. He was made a contributory in respect of twenty-five shares only. *Llanharry Hematite Iron Co., e.p. Tothill*, L. R., 1 Ch. 85; 35 L. J., Ch. 120; *e.p. Stork*, 33 L. J., Ch. 731.

E., being asked to act as director, made a conditional application for fifty shares, the number necessary for a director to hold. Not being satisfied he resigned his seat. He was not made a contributory. *Imperial Land Credit Corp., e.p. Eve*, 16 W. R. 1162; see also *Peninsular, West Indian and Southern Bank, Austin's Case*, L. R., 2 Eq. 435; *General International Agency Co., e.p. Chapman*, L. R., 2 Eq. 567; and *Little Down, &c. Mining Co.*, 3 L. T., N. S. 483.

It is difficult to reconcile the judgment of L. J. Turner in *Great Northern and Midland Coal Co., e.p. Currie* (2), 32 L. J., Ch. 421, *ante*, p. 10, with these decisions.

Where shares are issued as paid-up shares either improperly or beyond the powers of the company, no contract will be implied to take ordinary shares. Directors who had received paid-up shares as a gratuity from persons who had received them as part of a contract with the company were not made contributories. *Great Northern and Midland Coal Co., e.p. Currie*, 32 L. J., Ch. 57.

Nor does the mere fact of a director's name being placed on the register of shareholders bind him to take shares. *Re The Universal Banking Co., Bartlett's Case*, 16 W. R. 131.

Under powers of amalgamation.

The articles of association of a company provided that the directors might, with the consent of an extraordinary general meeting, "transfer and sell the business of the company, or purchase or amalgamate with the business of any other company of a like nature." Held, that a member could not, under this power, be compelled to become a member of a new company with more extended objects, nor, *semble*, in any new company at all. *Empire Assurance Corporation, e.p. Bagshaw*, 4 Eq. 341; 34 L. J., Ch. 663.

A company had power to subscribe for or take shares in, to enter into treaty, act or unite with, buy up or absorb any other company having the like objects, and to sell or transfer its business and property to any other company or individuals. The company agreed that it would amalgamate with another, and that to facilitate the amalgamation it should be wound up voluntarily, and the business and assets be merged in the amalgamated company. A resolution was also passed that the shareholders in the original company were to take shares in the amalgamated one in exchange for their old shares. Held, that a shareholder in the old company who had not assented to the amalgamation was not a shareholder in the amalgamated company. *London, Bombay and Mediterranean Bank, Drew's Case*, 36 L. J., Ch. 785.

In *Cork and Youghal R. Co.* v. *Paterson*, 18 C. B. 414, a person who had subscribed to a projected railway company, with power to amalgamate, was held liable to pay calls in an amalgamated company which was formed out of the subscribers to two proposed companies.

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The reasons given in the judgment were opposed to the cases above, but as the company was formed under act of parliament the case has little weight as an authority in respect of other kinds of companies.

Under C. A. 1862, s. 161.

A shareholder in a company which is in course of voluntary liquidation cannot be compelled under s. 161 to take shares in another company; nor does his failing to express his dissent from an arrangement made under that section, by which the assets of the company being wound up are exchanged for shares in another company, bind him to take his proportion of such shares. *Bank of Hindustan, China and Japan, e.p. Los*, 34 L. J., Ch. 609; *e.p. Higgs*, 2 H. & M. 657; *e.p. Martin*, 2 H. & M. 669. See also *Clinch* v. *Financial Corporation*, L. R., 4 Ch. 117; 38 L. J., Ch. 1.

Other cases.

A. transferred shares into the names of B. and C. without their knowledge. A. died, having appointed B. and C. executors. B. found the certificates, which, at the request of the company, he returned to them to cancel the shares as having been issued *ultra vires* and issue fresh shares; fresh shares were issued, placed in the names of B. and C., and the certificates given to B. It was held that B.'s name could be put on the list of contributories alone. *St. George's Steam Packet Co., e.p. Pim*, 3 De G. & Sm. 11.

A. and B., members of the managing committee of a provisionally registered company, had allotted to them and accepted one hundred shares. At a meeting of the committee an instruction was given for the allotment of shares according to a scheme by which five hundred shares were reserved to each member of the committee. A report was subsequently made to the committee by the secretary, at a meeting at which they were present, that shares had been allotted according to that scheme. They subsequently executed the parliamentary contract in respect of one hundred shares each. Held, there was no contract to take more than one hundred shares each. *Oxford and Worcester Extension R. Co., e.p. Sharp*, 1 D. M. & G. 565, overruling *e.p. Morrison*, 20 L. J., Ch. 296.

A person, by subscribing his name to the prospectus of an intended company, on the formation of the company did not become liable as a shareholder. *Bourne* v. *Freeth*, 9 B. & C. 632.

Where a father applied for shares in the name of his son and paid the deposit, but the directors refused to allow him to execute the deed for the son, the father was not liable to contribute. *Electric Telegraph Co. of Ireland, Maxwell's Case*, 24 Beav. 321.

L.'s name had been signed at the foot of an application for 300 shares without his knowledge by the direction of the managing director of the company. The shares were allotted, and L.'s name placed on the register of shareholders. When the facts came to the knowledge of L., the managing director, who was a private friend, told him that if he executed a form of transfer in blank he would be relieved of liability. He did so, but the transfer was filled up for 200 shares only and his name left on the register in respect of the remaining 100 shares. When he became aware of this, he asked the company to remove his name. Held, that he had not, by executing the transfer, adopted the allotment. *Cheltenham Railway Carriage Co., e.p. Little*, 17 W. R. 461.

The deed of settlement of a company registered under the Act of 1844, provided for the division of the persons concerned into three classes: those interested in the depositors' fund, those interested

in another fund, and those interested in the general fund. Persons who had made deposits with the company were not made contributories, though the company had no power of receiving money on deposit except as members. *National Insurance and Investment Association, e.p. Davies*, 31 L. J., Ch. 828.

Deposits.

11. Deposits and allotment money paid in respect of contracts to take shares in companies which prove abortive or are illegal (*a*), or on contracts voidable from fraud, are debts from the person to whom they are paid, recoverable at law (1); but if the depositors have agreed that their deposits are to be applied to the payment of preliminary expenses, on the failure of the scheme they are entitled, by bill in equity or by means of a winding-up order (*b*), to have the money applied to its purpose and the surplus divided among them (2). On the other hand, persons who have contracted to pay deposits on account of applications for shares can be sued at law on such contracts (3).

Deposits are not affected with a trust, and not recoverable in equity.

(1) A person who has taken shares in a company which was provisionally registered under the Act of 1844 and paid deposits thereon, cannot recover the deposit by a suit in equity, but must bring an action at law. *Denton* v. *Macneil*, L. R., 2 Eq. 355.

The right to recover deposits made by allottees of shares in an abortive company is a personal right of action: they have no charge on a specific fund. *Grant* v. *North of England R. Co., e.p. Caruch*, 20 L. J., Ch. 670.

The promoters of a company issued a prospectus stating that the deposits would be returned if no allotment of shares was made. No allotment was made. Held, that this statement did not bind monies consisting mainly of such deposits standing with a bank to the credit of a company, with a trust or lien in favour of the depositors. *Moseley* v. *Cressey's Co.*, L. R., 1 Eq. 405.

Where a plaintiff, having been struck off the register of a company by an order of the court, on the ground of excess in the objects of the company as shown by the memorandum over those stated in the prospectus, on the faith of which he took shares, filed a bill for the return of his deposit money. A demurrer was allowed, on the ground that the money was not impressed with any trust, and no fraud was alleged. *Stewart* v. *Austin*, L. R., 3 Eq. 29; 36 L. J., Ch. 162.

The defendants projected a *bonâ fide* company, but after they

(*a*) Money paid for an illegal purpose can be recovered before it has been used. *Taylor* v. *Lendy*, 9 East, 49; *Varney* v. *Hickman*, 5 C. B. 271. As to illegal companies, see further, C. A. 1862, s. 4.

(*b*) See *post*, C. A. 1862, s. 199, as to the winding-up of abortive companies.

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became aware that it was impracticable the plaintiff agreed to take shares and paid a deposit. A demurrer was allowed to a suit on behalf of himself and others, as he was only entitled to a return of the deposit money; as there was fraud it was a proper case for equity. *Harvey* v. *Collett*, 15 Sim. 332.

A plea that the plaintiff's claim to have his deposit returned was part of the affairs of a concern to be wound up, and a reasonable time for winding them up had not elapsed at the commencement of the suit, was bad as amounting to the general issue. *Owen* v. *Challis*, 17 L. J., C. P. 266; 6 C. B. 115; *Coupland* v. *Challis*, 2 Ex. 682.

Where the provisional committee of a projected company had agreed with a solicitor, who took upon himself the preliminary expenses, that a fund raised from deposits made by applicants for shares should be applied in payment of those expenses; in a suit by the solicitor to enforce his charge on the fund, the depositors were not represented. *Parsons* v. *Spooner*, 15 L. J., Ch. 155; 5 Hare, 102.

Unless there is fraud.

The promoters of a railway issued a prospectus stating that the landowners had been applied to generally and were in favour of the line. This was not true, but owing to the opposition of the landowners the necessary bill was thrown out. Persons to whom shares had been allotted recovered their deposits in equity on account of fraud. *Cridland* v. *De Mauley*, 17 L. J., Ch. 190; 1 De G. & Sm. 459.

A bill in equity lies to recover the deposits when the project is a bubble. *Green* v. *Barrett*, 1 Sim. 45; *Colt* v. *Woolaston*, 2 P. W. 154.

Can be recovered at law.

An action at law will lie for money had and received in respect of such deposits. *Johnson* v. *Goslett*, 18 C. B. 728; 3 C. B., N. S. 56; 25 L. J., C. P. 274; 27 L. J., C. P. 122, where an action was brought against all the promoters, though the money was kept in the names of five only.

Where a scheme for establishing a tontine had been abandoned, held that each subscriber might recover his deposit in an action for money had and received without any deduction for expenses incurred. *Nockell* v. *Crosby*, 3 B. & C. 814.

In *Walstab* v. *Spottiswoode*, 15 L. J., Ex. 193; 15 M. & W. 501, it was held that an action of assumpsit would lie against one of the members of a provisional committee of an abortive railway company by an allottee.

An allottee of shares received with notice of allotment a letter by which the directors undertook to return the whole of the deposits in the event of their act not being obtained; he subsequently signed the subscribers' agreement, which authorized the directors to apply the deposit to preliminary expenses; he recovered his deposit. *Mowatt* v. *Londesborough*, 4 E. & B. 1; 23 L. J., Q. B. 38.

In an action of this nature it was left to the jury to determine whether the scheme had failed, and whether the plaintiff had agreed that his deposit should be employed in paying preliminary expenses. *Moore* v. *Garwood*, 19 L. J., Ex. 15; 4 Ex. 681.

Unless the depositors have authorized

On a letter of allotment it was indorsed that "the directors assumed the right to carry out their intentions by the adoption of all such measures as they may deem requisite for obtaining the necessary par-

liamentary powers, &c., and to apply the amount paid for deposits in discharge of any liabilities incurred under the general powers vested in them for the prosecution of the undertaking." Held, that if all the deposits had been applied for the purpose of carrying the undertaking into effect in a reasonable and proper manner (which was a question for the jury), and before it was clear that the scheme must fail, an allottee who had paid deposits was not entitled to recover. *Jones* v *Harrison*, 17 L. J., Ex. 132; 2 Ex. 52.

their application to preliminary expenses.

Evidence of such authority.

An allottee of shares signed a subscribers' agreement which gave the provisional committee power to apply the deposits towards the preliminary costs. The scheme proving abortive, he failed to recover his deposit in an action against one of the committee. *Jarwood* v. *Ede*, 17 L. J., Ex. 29; 1 Ex. 264.

The same was the case where an allottee had not signed the subscribers' agreement, but had received a scrip certificate containing the words "the subscribers' agreement and parliamentary contract having been signed by the person to whom the certificate is issued." *Clement* v. *Todd*, 17 L. J., Ex. 31; 1 Ex. 268.

Where an application for shares stated that the applicant agreed to accept the shares "subject to the provisions of the subscribers' agreement, and to execute the same," and the letter of allotment in answer stated that scrip would be delivered on the plaintiff executing the parliamentary contract and subscribers' agreement, and also a subscribers' agreement dated subsequently to the letter of allotment, but not executed by the plaintiff, which purported to give the directors larger powers than the 7 & 8 Vict. c. 110, s. 23, and to enable them in the exercise thereof to expend the deposits: Held, that as the subscribers' agreement was not such as the plaintiff could properly have been called upon to execute, he was entitled, on the scheme proving abortive, to recover back the deposit. *Ashpital* v. *Sercombe*, 19 L. J., Ex. 82; 5 Ex. 147.

Where, in a similar case, the directors had issued a circular stating that, in the event of an act of parliament not being obtained, "the directors undertake to return the whole of the deposits without any deduction," the depositee recovered; and the affidavit of the secretary that he did not know whether he had sent such circular to the plaintiff, but to the best of his belief he had, was sufficient evidence that the plaintiff had received such intimation. *Ward* v. *Londesborough*, 12 C. B. 252.

An action was successfully brought for money had and received against one of the committee of management of a projected company by an allottee who had made a deposit and executed a deed authorizing the payment of expenses out of the money subscribed, he having been induced to do so through the fraudulent statements of the committee. *Wontner* v. *Shairp*, 17 L. J., C. P. 38; 4 C. B. 404.

Fraud avoids such agreements.

Where the committee had suppressed facts. *Jarrett* v. *Kennedy*, 6 C. B. 319.

Compare *Vane* v. *Cobbold*, 1 Ex. 798. *Watts* v. *Salter*, 10 C. B. 476, 20 L. J., C. B. 43, seems to conflict with these.

In *Atkinson* v. *Pocock*, 1 Ex. 796, it was left to the jury to determine whether the scheme was *bonâ fide*.

And it lies on the plaintiff in such actions to show that he has not given authority to expend the deposit in preliminary expenses;

It lies on the depositee to

Par. 11 (1). show absence of such agreement;

therefore, the letter of allotment must be put in evidence. *Mowatt* v. *Londesborough*, 3 El. & Bl. 307.

In an action to recover back a deposit, secondary evidence was given of the letter of allotment, the original being lost; but the letter of application was not produced. The former was headed "not transferable." The plaintiff was entitled to recover, for if there was no letter of application, the letter of allotment and payment of deposit constituted the contract, and if there was such a letter the words "not transferable" imposed a new term. *Chaplin* v. *Clarke*, 4 Ex. 403.

Therefore, in an action for the return of deposits against a railway director, the court ordered the defendant to furnish the plaintiff inspection and copy of a subscribers' agreement and parliamentary contract, on an affidavit that they were necessary for the purpose of framing the plaintiff's case. *Steadman* v. *Arden*, 15 L. J., Ex. 310; 15 M. & W. 587; *Ley* v. *Barlow*, 17 L. J., Ch. 105; 1 Ex. 101.

—and that the scheme is abortive.

The plaintiff must aver that the scheme is abortive. *Hayes* v. *Stirling*, 14 Ir. C. L. R. 277.

(2) A defendant to a bill of this nature, who was stated in the bill to be a shareholder declining to concur with the plaintiff, demurred on the ground that the case stated by the bill entitled the shareholders to a return of the whole deposit, and that the plaintiff, who was suing on behalf of himself and all other depositors except the defendant, could not represent them for the purpose of seeking a less extensive remedy. The demurrer was overruled. *Sibson* v. *Edgworth*, 2 De G. & Sm. 73.

Actions for deposits.

(3) A declaration alleged that the plaintiffs had agreed with other persons to establish a company, the capital of which was to be divided into shares, and a deposit of two guineas per share to be paid by the persons applying for them, and to whom they should be allotted by the managing committee. That the plaintiffs were constituted the managing committee, and, at the request of the defendant, allotted him shares "upon certain terms then agreed upon between them, viz., that a deposit of two guineas per share should be paid by the defendant to the account of the company to certain bankers." That the plaintiffs and defendant had each promised to perform the terms on their respective parts. Held, that the declaration disclosed a contract which entitled the plaintiffs to sue without joining the other members of the company. *Duke* v. *Forbes*, 17 L. J., Ex. 37; 1 Ex. 356.

In another case the members of a committee of management, who were part of a provisional committee, sued an allottee of shares for deposit money; at the foot of the letter of allotment was a form of bankers' receipt, which professed to be "on account of the provisional committee." The plaintiffs were nonsuited, as they had not proved the defendant's contract to have been made with them. *Woolmer* v. *Toby*, 16 L. J., Q. B. 225; 10 Q. B. 691; see also *Duke* v. *Dive*, 16 L. J., Ex. 234; 17 L. J., Ex. 231; 1 Ex. 36; 2 Ex. 290.

Extent of liability on contracts to pay deposits.

Where on the letter of allotment was endorsed a memorandum to the effect that, as it was unnecessary to lock up a large sum of money over and above what the expenses would require, only a portion of the deposit need be paid at once. *Willey* v. *Parrett*, 18 L. J., Ex. 82; 3 Ex. 211.

CHAPTER III.

THE MANAGEMENT OF COMPANIES.

Directors.

12. The particular agency (usually a board of directors) by which the business of a company is carried on, and the mode of appointment, dismissal and retirement of the agents (1), are matters of internal arrangement, settled in each instance by the articles of association (2) or other instrument regulating the affairs of the particular company, and, so far as not provided thereby, by custom (3).

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(1) See C. A. 1862, Table (A); C. A. 1856, Table (B); "Powers of Majorities," *post*, 17.

(2) See C. A. 1862, ss. 14, 15, 16.

(3) Where the articles of association do not prescribe a quorum, the number who usually act in conducting the business of a company is a properly constituted quorum. *Re Tavistock Iron Works Co., Lyster's Case*, 4 Eq. 233; 36 L. J., Ch. 616.

Powers of directors and agents.

13. The directors or other executive of a company can do such acts on behalf of the company as they have express power provided by the instruments under which the company is formed and regulated (1), or which are necessary to carry out the objects of the company (2); and persons dealing with the directors or other agents of a company incorporated by registration are affected with notice of the contents of the articles of association, so that they have no remedy in respect of contracts in contravention of such instruments (3).

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(1) The express powers of directors in companies formed under the Acts of 1856, 1862, are contained in the articles of association. (See C. A. 1862, ss. 14—16). They are controlled by the objects of the company as expressed in the memorandum or otherwise. (See *post*, C. A. 1862, s. 14). Directors have power to do all incidental matters necessary to carry out their powers; therefore where they had power to amalgamate, they could give an indemnity necessary to carry out an amalgamation.

Par. 13 (1).

Matters particularly provided for by articles.

The directors may do all acts necessary to carry out any contract entered into by means of, and appearing on the face of, the articles of association or other instrument under which the company is formed. B. and D. agreed to sell their business to a company when formed, part of the purchase-money to be paid in debentures payable to bearer. Debentures issued by the directors in conformity with this were allowed to be proved in the winding-up by the holders without reference to the equities between the company and B. and D. L. J. Rolt, said, "The debentures are part of the debentures issued and delivered in performance of the agreement, and as the articles of association declare that the agreement is binding on the company and that it shall be carried into effect, and as the debentures are in the very terms prescribed by the agreement, I think it impossible for the company to say that a contract by the directors in terms of the debentures was *ultra vires*." *Re Blakeley Ordnance Co., e.p. New Zealand Banking Corp.*, L. R., 3 Ch. 155; 37 L. J., Ch. 418.

A deed of settlement of a banking company gave the directors power to confirm any contract and all acts done by persons acting as directors in relation to the formation and establishment of the company. The provisional directors had entered into a contract with a manager to pay him a salary, and if the bank should discontinue business before the term agreed upon to pay 1,000*l.* a year for three years. Held, the directors had power to confirm that contract. *Wilkin* v. *Roebuck*, 4 Drew. 281.

It was agreed between the directors of an intended banking company that one of them should retire and receive back what he had paid. The deed under which the company was formed was not executed till afterwards. The parties thereto ratified all acts, contracts, deeds, matters and things up to the time of its execution done by the directors. The retiring director afterwards received what he had paid on the shares. On the winding-up of the company he was not made a contributory as between himself and the shareholders, not being liable to debts incurred either before or after the execution of the deed by the shareholders. *Marylebone Banking Co., e.p. Busk*, 3 De G. & Sm. 267.

(2) I. *Matters not depending on the particular Objects of the Company.*

Taking legal proceedings.

The directors can conduct legal proceedings in the name of the company. (See C. A. 1862, s. 18, and par. 5, *ante*.)

A compromise by directors in respect of a claim for promotion of a company, the stipulation for which was alleged to be fraudulent, was held binding on the shareholders. At the time of compromise there being genuine proceedings between the claimant and directors, so that the matter was public to all shareholders. *Re General Exchange Bank, Preston's Claim*, 16 W. R. 1097.

Appointment of agents.

Though directors cannot delegate their discretionary powers (*post*, par. 18), the business of a company must in general be carried on by means of agents, and the directors have therefore power to appoint and remove servants and agents.

It seems even that if the articles provide that a servant shall not be dismissed except by authority of a general meeting, the directors can dismiss him. *Mair* v. *Himalaya Tea Co.*, 1 Eq. 411, where an

injunction was sought to restrain any interference with the position of the plaintiff as agent and consignee, which was refused.

An annuity was granted to a clerk to retire, on condition that he should abstain from acts prejudicial to the company. *Clarke* v. *Imperial Gas Co.*, 4 B. & Ad. 315.

As to the appointment of attornies to execute deeds abroad, see C. A. 1862, s. 55.

The Companies Act, 1844, s. 45, provided that bills of exchange and promissory notes should be made or accepted in the names of two directors and countersigned by the secretary. This did not prevent the appointment of a foreign agent with power to draw bills on behalf of the company. *Re State Fire Insurance Co., e.p. Mendeth*, 32 L. J., Ch. 500.

Incurring debts.

The directors of every company have power to pledge its credit for goods supplied or work done to carry out the purposes of the company.

A cost-book mining company was held liable for the price of goods supplied to carry on the works of the company. *Hawkes* v. *Bourne*, 8 M. & W. 703; *Newton* v. *Daly*, 1 F. & F. 26; *Tredwen* v. *Bourne*, 6 M. & W. 461. Though an action for flour supplied to a flour mill and baking company failed. *Kingsbridge Flour Mill Co.* v. *Plymouth Grinding and Baking Co.*, 2 Ex. 718. It is thought that this could not be supported now.

Money borrowed even for the purpose of paying such debts cannot be recovered at law. A mining company was held not liable for money borrowed by the manager for payment of wages. *Hawtayne* v. *Bourne*, 7 M. & W. 595; *Burmester* v. *Norris*, 21 L. J., Ex. 43; 6 Ex. 796.

V. C. Stuart seems to have thought that an overdrawn account with the company's bankers was an exception to this rule. *Re Cefn Cilcen Mining Co.*, L. R., 7 Eq. 88; 38 L. J., Ch. 78. But as in any case this debt could have been proved on equitable grounds in the winding-up (see *post*, 29), this case will probably not be conclusive at law.

Debentures.

Companies may give bonds to secure any debts they can lawfully incur and interest. Debentures issued in payment of existing debts are valid. *Inns of Court Hotel Co.*, 37 L. J., Ch. 692; L. R., 6 Eq. 82. See further *Shelford on Railways*, vol. 1, p. 63, 4th ed.

A debt due on such debentures is a *chose in action*, assignable in equity only, subject to the equities subsisting between the company and the assignor at the time of notice of assignment being given to the company (*a*).

(*a*) *Nature of Debentures.*]—An assignee for value, without notice, was restrained from suing on debentures issued in fraud, on terms of the company paying him what they had actually received on them. *Athenæum Life Assurance Society* v. *Pooley*, 3 De G. & J. 294; 28 L. J., Ch. 119.

A suit will not lie to restrain the holder of bonds issued in fraud from parting with them. *Aberaman Iron Works* v. *Wickens*, 5 Eq. 516.

Where a company had issued debentures to a director, which were afterwards held to be void in his hands, and they by their acts encouraged the holder to think them valid, he was allowed to prove in the winding-up of the company. *Re South Essex Gas Co., e.p. Hulett*, 31 L. J., Ch. 293.

Debentures made payable to C. were issued to B. B. did not take,

Par. 13 (2).

There is a conflict of opinion as to whether all companies can by the form of the instrument contract away this equity; at any rate

subject to the equities against C. *Blakeley Ordnance Co., e.p. Metropolitan and Provincial Bank*, N. R., June 7, 1869.

As to the assignment of choses in action, see White and Tudor's Leading Cases in Equity, vol. ii., *Row* v. *Dawson*.

Dividends of debentures payable after the death of a testator were apportioned between the testator's estate and the legatee. *Re Roger's Trusts*, 1 Dr. & Sm. 338.

Debentures issued in payment of a debt satisfied that debt, so that a past member could not be made a contributory, no other debt having been contracted before he ceased to be a member. *Blakeley Ordnance Co., Holland's Case*, 14th July, 1869.

Scrip entitling holders to debentures requires a penny stamp (*post*, 30 & 31 Vict. c. 90, s. 20), and so do assignments of debentures, s. 23.

In *Aslatt* v. *Farquharson*, 10 W. R. 458, V. C. Wood thought that a mere affidavit that upon accounts being taken there would be found a balance in favour of the company, would not give them a right of set-off against the obligor; and there was no equity to prevent the assignee claiming on such debentures. In that case property had been assigned in trust for the "holders for the time being" of certain debentures. It was held, that equities of the company against the obligor would not affect the right of the holder in the trust property.

Construction of Debentures.]—Where the company by debenture covenanted to pay "to B. and D., their executors, administrators or assigns, or to the bearer hereof," the holder of the debenture was allowed to prove in the winding-up of the company for the full amount, without reference to the equities subsisting between the company and B. and D. *Re Blakeley Ordnance Co., e.p. New Zealand Banking Corp.*, 3 Ch. 154; 37 L. J., Ch. 418. So where an instrument under seal professed to be a debenture, and the company undertook "to pay to the order of J. H. on the 1st of July, 1867, 1,000*l.* with interest half-yearly on presentation of the annexed interest warrants." *Re General Estates Co., e.p. City Bank*, 3 Ch. 758.

The distinction between these cases and *Re The Natal Investment Co.*, 37 L. J., Ch. 362; L. R., 3 Ch. 355, is somewhat fine; in that case the company undertook to pay to A. "or his executors, administrators or his transferees, or to the *holder for the time being*." L. C. Cairns held that this form was introduced merely to prevent the company insisting on the holder of the debenture producing a formal assignment before payment; and that he took subject to equities. And consequently debentures payable to "transferees" are subject to equities. *Re Rhos Hall Iron Co., e.p. Birmingham Bank*, 17 W. R. 343.

A debt due on a deposit note was assigned not subject to equities. *Woodhams* v. *Anglo-Australian Assurance Association*, 3 Giff. 288.

Debentures containing the words "The said company hereby charge all the lands, tenements and estate of the said company and all their undertaking," did not include unpaid calls or capital not paid up. *King* v. *Marshall*, 33 Beav. 565; 34 L. J., Ch. 163.

The words "undertaking and property and receipts and revenues" in debentures did not include the capital of a company. *Re Marine Mansions Co.*, L. R., 4 Eq. 601; 37 L. J., Ch. 113. See also *New Clydach Sheet and Bar Iron Co.*, L. R., 6 Eq. 514, where it was held debentures purporting to be an assignment of the undertaking and all the real and personal estate of the company, was a valid charge on all personal property existing at date of the debentures.

companies that have the power of issuing promissory notes may. *Re General Estates Co., e.p. City Bank*, L. R., 3 Ch. 758. In that case L. J. Wood said, in reference to an instrument of this kind, "The better opinion seems to me to be that this is a promissory note; but if it be not so, the authorities go to this: that where there is a distinct promise held out by a company, informing all the world that they will pay to the order of the person named, it is not competent for that company afterwards to set up equities of their own, and say, because the person who makes the order is indebted to them, they will not pay."

On the other hand, L. J. Rolt said, "Though I do not doubt that the debtor in an obligation may, if his powers of contracting are unlimited, contract himself out of the right of resorting as against the assignee of the creditor to his equities against the creditor himself; yet I am not satisfied that the mere power of issuing debentures would authorize the directors of a company to bind the company at large by such a contract." *Re Blakeley Ordnance Co., e.p. New Zealand Banking Corp.*, L. R., 3 Ch. 154; 37 L. J., Ch. 418. The latter appears the better opinion, for a debenture payable to order or bearer seems to differ from a promissory note only in that the former is generally under seal.

Forfeiting shares.

Directors cannot cancel a contract to take shares from a company. *North Shields Co., Davidson's Case*, 4 K. & J. 688; *Saloon Steam Packet Co., e.p. Fletcher*, 37 L. J., Ch. 49. The contrary however was held with respect to an unincorporated company. *Kollman's Carriage Co., e.p. Beresford*, 2 M. & G. 197.

But if it be doubtful whether there is a contract binding on a person to take shares of the company, they can compromise the matter and cancel the contract as part of the compromise. *Agriculturists Cattle Co., Lord Belhaven's Case*, 34 L. J., Ch. 503. A person's name was removed from the register of shareholders, he alleging that he had been induced to take shares through the fraud of the company. *Life Association of England, e.p. Blake*, 32 L. J.,

See further in respect to the meaning of the word "undertaking" in mortgages under parliamentary powers, *Furness* v. *Caterham R. Co.*, 27 Beav. 358; *Gardner* v. *London, Chatham and Dover R. Co.*, L. R., 2 Ch. 201; 36 L. J., Ch. 323; *Fountain* v. *Carmarthen R. Co.*, L. R., 5 Eq. 316.

Construction of Powers of Borrowing.]—A power to borrow on the security of the funds of the society did not authorize a mortgage of future calls. *British Provident Life and Fire Assurance Society, e.p. Stanley*, 33 L. J., Ch. 534.

A power of mortgaging calls does not warrant the giving a power of sale in such mortgages. *Pickering* v. *Ilfracombe R. Co.*, L. R., 3 C. P. 255.

Rights of Mortgagees.]—A call of 20*l.* per share was mortgaged before the call was got in. The company was ordered to be wound up, and a further call of 5*l.* was made. The official liquidator made a compromise with contributories, taking 3,000*l.* instead of 4,900*l.* Held, that the money had to be applied, in the first place, in satisfaction of the earlier call, and apportioned between them, as the company had no right to prejudice the security by making a second call. *Re Humber Ironworks Co., e.p. Warrant Finance Co.*, 16 W. R. 474.

Par. 13 (2).

Ch. 278; 34 Beav. 634; *Agriculturists Cattle Insurance Co., Dixon's Case*, 17 W. R. 1036.

They cannot cancel such contracts or forfeit shares as part of a compromise of independent litigation. *Spackman* v. *Evans*, L. R., 3 Ex. 171; 37 L. J., Ch., 752. Nor can they forfeit shares without an express power. *Ib.; Houldsworth* v. *Evans*, L. R., 3 Ex. 263; 37 L. J., Ch. 800; *Marylebone Banking Co., Stanhope's Case*, 3 De G. & Sm. 198.

Where under the instrument regulating a company the shareholders might be sued or the shares declared forfeited after judgment obtained, the shares could not be foreited. *Giles* v. *Hutt*, 3 Ex. 18; *Great Northern R. Co.* v. *Kennedy*, 4 Ex. 417; *Edinburgh, &c. R. Co.* v. *Hibblewhite*, 6 M. & W. 707.

Shares were given by the directors of a company to their secretary. His brother executed the deed of settlement of the company, as the secretary himself was the covenantee in respect of the shares. The directors found they had been acting wrongfully, and rescinded the resolution giving the shares, and the certificates were delivered up. On the winding-up of the company the brother's name was put on the list of contributories. *Independent Assurance Co., e.p. Holt*, 1 Sim., N. S. 389.

Issuing shares.

They cannot issue shares on terms more favourable to one shareholder than the others.

Directors cannot agree with tradesmen in general to take goods, the price to be set-off against calls. *Richmond Hill Hotel Co., e.p. Pellatt*, 2 Ch. 527; 36 L. J. 613.

In the case of an unlimited company it was held that they cannot agree with a person that he should hold shares and not be liable for the debts, but participate in profits. *Electric Telegraph Co. of Ireland, e.p. Bunn*, 29 L. J. 913; 2 D. F. & J. 275.

Quære, whether an agreement between a company and its agent in respect of the agency, part of which was that 8*l.*, part of call of 10*l.* on 100 shares, should be deferred and placed to his debit, could stand. *London and Colonial Co., e.p. Clark*, L. R., 7 Eq. 550.

Directors had taken shares, in order to satisfy rules of the House of Lords, and got their company incorporated. They made a call not payable on such shares. A single shareholder filed a bill to have the call declared fraudulent and void. *Preston* v. *Grand Collier Dock Co.*, 11 Sim. 327.

But in *Universal Salvage Co., Woodfall's Case*, 3 De G. & Sm. 63, a person's name was removed from the list of contributories on the ground that he had contracted to incur no liability. However, he had sold the shares; they were given him as the price of goods supplied to the company.

Holding shares.

A company cannot, without express powers, hold its own shares in the name of a trustee. *Marylebone Banking Co., e.p. Davidson*, 3 De G. & Sm. 21.

But a power for directors of a company "to do all such acts, enter into all such contracts and engagements, and pay and apply and dispose of any of the monies of the company, and generally act in such manner as they should from time to time deem necessary or expedient for carrying out all or any of the objects or purposes of the company," enabled them to purchase their own shares for the

company in the name of a trustee. *National and Provincial Marine Insurance Co., Singer's Case*, M. R., July 26, 1869.

Sales and leases.

Directors may sell the property of the company. It was even held that the directors of a shipowning company might sell the whole fleet of the company at once. *Wilson* v. *Miers*, 10 C. B. 348. So also *Styles* v. *Cardiff Steamboat Co.*, 4 N. R. 83, where there was an express power to sell duly obtained. Where a company had underlet a portion of their premises, their landlord having distrained on goods of their tenant, an action for indemnity against the company failed, as the whole transaction was *ultra vires*. *Brindley* v. *Plymouth Grinding and Baking Co.*, 2 Ex. 711.

Negociable instruments.

Directors of companies that are not trading companies cannot issue promissory notes or draw or accept bills of exchange. *Cefn Cilcen Mining Co., e.p. Edgworth*, 38 L. J., Ch. 78; L. R., 7 Eq. 88; *Bateman* v. *Mid Wales R. Co.*, L. R., 1 C. P. 499; 35 L. J., C. P. 205; *Peruvian Rs. Co.* v. *Thames and Mersey Marine Insurance Co.*, L. R., 2 Ch. 619; 36 L. J., Ch. 864; *Broughton* v. *Manchester Waterworks Co.*, 3 B. & A. 1; *Steele* v. *Hamer*, 14 M. & W. 831 (a case of a cemetery company); *Bult* v. *Morell*, 2 A. & E. 745 (a salt and alkali company); *Bramah* v. *Roberts*, 3 B. N. C. 963; *Neal* v. *Turton*, 4 Bing. 149 (a washing company); *Dickinson* v. *Valpy*, 10 B. & C. 128; *Brown* v. *Byers*, 16 M. & W. 252 (mining companies); and *Thomas* v. *Universal Salvage Co.*, 1 Ex. 649; see *infra*, "Trading Companies."

Indorsing bills.

Though directors have no power to accept bills, they may pass the property by indorsement. *Smith* v. *Johnson*, 3 H. & N. 222; 27 L. J., Ex. 363.

Directors cannot give an option to a party to accept a contract at a distant time. For where a company had power to lease and to sell, it could not lease with option to the lessee to buy at a fixed price. *Clay* v. *Ruffords*, 5 De G. & Sm. 768.

Obtaining acts of parliament.

Directors cannot apply the funds of a company towards the expense of applying for parliamentary powers.

A committee of management for winding-up a company were not allowed expenses of procuring the insertion of clauses in Winding-up Act applicable to the affairs of the company. *St. George's Steam Packet Co., e.p. Cropper*, 21 L. J., Ch. 593; 1 D. M. & G. 147.

Questions on this subject usually arise in the cases of companies formed by act of parliament. See *Shelford on Railways*, vol. 2, p. 114, 4th edit.

II. *Matters depending on the Objects of the particular Company.*

Trading companies.

Trading companies can issue promissory notes and draw and accept bills of exchange. *Cefn Cilcen Mining Co., e.p. Edgworth*, 38 L. J., Ch. 78; L. R., 7 Eq. 88.

Where the objects of the company were to acquire property "for building thereon, improving, letting or selling," they could issue promissory notes. *Re General Estates Co., e.p. City Bank*, L. R., 3 Ch. 758.

Though an over-due bill of exchange can only be assigned subject to equities, a company that can draw or accept has power to contract away that equity by the form of the instrument. *Re Agra and Masterman's Bank, e.p. Asiatic Bankers' Corp.*, 2 Ch. 361; 36 L. J., Ch. 222. Compare cases on debentures, *ante*, p. 45.

Par. 13 (2).

But banking partnerships consisting of more than six members are prohibited from issuing within sixty-five miles of London notes payable on demand or within six months after date.

A trading company can give a bill of sale of its effects as security for debt for goods supplied for the purpose of its trade. *Shears* v. *Jacob*, L. R., 1 C. P. 513; 35 L. J., C. P. 241.

Banking and financial companies.

A banking company, from its nature, can borrow money. An express provision against it in the articles would probably be void as being contrary to the memorandum of association. See *post*, C. A. 1862, s. 14. The issue of bank-post bills by a banking company was held valid. *Forbes* v. *Marshall*, 11 Ex. 166; 24 L. J., Ex. 305.

It is part of the business of banking companies to lend money on such securities as shares in other companies, and for that purpose to have the shares transferred to themselves. For that purpose they can hold shares in other companies; *Re Asiatic Banking Corp., e.p. Royal Bank of India*, L. R., 7 Eq. 91; 4 Ch. 253; but a purchase of shares in a banking company for the purpose of increasing the business of a discount company is *ultra vires*. *Joint Stock Discount Co.* v. *Brown*, 1 Eq. 139.

The objects of a company were very extensive, including the transaction of the business of a capitalist. They took shares in a company whose objects were the formation of companies to construct railways in Peru. *Peruvian Railway Co., e.p. International Contract Co.*, 17 W. R. 454.

Other companies.

A company formed to work a patented machine may purchase the patent. *Re British and Foreign Cork Co., Liefchild's Case*, 1 Eq. 231. It was doubted whether a copper company could sue on a contract for the supply of iron. *Copper Mining Co.* v. *Fox*, 16 Q. B. 229.

A benefit building society cannot purchase land except for the purpose of building. *Re Kent Benefit Building Society*, 1 Dr. & Sm. 417; 30 L. J., Ch. 788; *Grimes* v. *Harrison*, 28 L. J., Ch. 823; 26 Beav. 435.

As the directors are generally under the control of the majorities of shareholders, matters beyond the power of majorities are, in the absence of special provisions, also beyond the power of the directors. See *post*, par. 17.

Strangers affected with notice of regulations.

(3) With respect to a company incorporated by registration under the Act of 1844, Lord Wensleydale said: "The legislature devised the plan of incorporating these companies in a manner unknown to the common law, with special powers of management and liabilities, providing at the same time, that all the world should have notice who were the persons authorized to bind all the shareholders by requiring the partnership deed to be registered, certified by the directors and accessible to all." "All persons therefore must take notice of the deed and of the provisions of the act; if they do not choose to acquaint themselves with the powers of the directors, it is their own fault; and if they give credit to any unauthorized persons they must be content to look to them only and not to the company at large." *Ernest* v. *Nicholls*, 6 H. L. 401; 3 Jur., N. S. 923. See *Balfour* v. *Ernest*, 5 C. B. 601; 28 L. J., C. P. 170, where a company registered under the Act of 1844 was held not liable on a bill of exchange drawn in satisfaction of a contract, *ultra vires*.

A person making a deposit with a company was not implied to

have contracted to take shares, though her acts might have been so construed if she had been thoroughly acquainted with the deed of settlement, &c. The company had issued statements likely to mislead. *National Insurance and Investment Association, e.p. Davies*, 31 L. J., Ch. 828.

This rule does not extend to private regulations for the management of the company not appearing on the face of the registered articles of association.

The articles of association of a banking company provided that the business should be fixed and determined and in all respects regulated by such rules, regulations and bye-laws as the directors of the company might from time to time make. The directors duly made a bye-law that shares in public companies might be accepted as security for a previous debt; but that shares in public companies so accepted as security should not be transferred to the bank, so as to involve it in the liabilities of such companies.

The company was made a contributory in respect of shares in another company which had been registered in its name, notwithstanding the bye-law. *Asiatic Banking Corporation, e.p. Royal Bank of India*, L. R., 4 Ch. 252.

Nor does it apply to the regulations of an unincorporated company; *e.g.* it was held that the provisions of the deed of settlement were not incorporated into a policy of an assurance company. *Re Merchant Trader, &c. Association, e.p. Talbot*, 5 De G. & Sm. 386; *ante*, p. 6; see also *Forbes* v. *Marshall*, 11 Ex. 166.

Powers of agents.

14. The general law of agency is applicable to companies as to other persons; so that, provided they act within the objects of the company (1), its servants and agents can bind the company by contracts within the limits of the duties usually carried on by such persons (2), and persons who have been acting on behalf of a company as its ostensible agents with the knowledge of the directors, can bind the company within the scope of their apparent authority (3).

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(1) In *Roe* v. *Birkenhead R. Co.*, 21 L. J., Ex. 9; 7 Ex. 36, a person brought an action for false imprisonment at the hands of a servant against a railway company, he was nonsuited partly on the ground that he had failed to show that the defendants had power themselves to do the act complained of. See also *Poulter* v. *London and North Western R. Co.*, *post*, p. 54.

An agent insured by parol, on behalf of a company which had no power to do so, the insurance was void. *Montreal Assurance Co.* v. *M'Gillivray*, 8 W. R. 165.

Notice.

(2) For instance, notice given to the directors or agents of a company while transacting the business of the company is imputed to the company. See *Peruvian Rs. Co.* v. *Thames and Mersey R. Co.*, 2 Ch. 617; 36 L. J., Ch. 864, *ante*, p. 47.

Where, by the rules of a mutual guarantee society, notice of the

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withdrawal of any of the members was required to be given, but no particular form of notice was required, nor was it stated to whom the notice should be given, a parol notice of withdrawal given by a member to the agent through whom the original contract with the society was made was sufficient. *Re The Solvency Mutual Guarantee Society, Hawthorne's Case*, 31 L. J., Ch. 625.

A shareholder in a joint stock company made an assignment of certain shares by way of mortgage. The assignee gave no notice to the company. The assignor had other shares in the company, and in the course of discussions at the board of directors respecting the unpaid shares the assignor verbally informed the directors of the assignment, but no entry was made on the minutes of this notice. The assignor became bankrupt: Held, that inasmuch as the directors received the information in the course of transacting the business of the company, the notice was sufficient to take the shares out of the order and disposition of the bankrupt. *E.p. Agra Bank, Re Worcester*, L. R., 3 Ch. 555.

If an agent himself is the assignor of any *chose in action*, distinct notice is required. *Browne* v. *Savage*, 2 Drew. 635.

A verbal notice given to a residential director as such was sufficient. *North British Insurance Co.* v. *Hallett*, 7 Jur., N. S. 1263.

Where an agent of a company was authorized to receive notice, the fact of his being employed in assigning a policy took the policy out of the order and disposition of the assured. *Gale* v. *Lewis*, 16 L. J., Q. B. 119; 9 Q. B. 730.

Assignment of a policy by a member of a mutual insurance company requires distinct notice; *Thompson* v. *Spiers*, 13 Sim. 469; *Re Bromley, e.p. Wilkinson*, 13 Sim. 475, overruling *Duncan* v. *Chamberlane*, 11 Sim. 120; but these decisions might also have been given on the ground that a shareholder is not an agent of the company. See "Status of Shareholders," par. 36. Where the secretary of a company casually became aware of the fact that policies had been deposited with a banker as security, they remained in the order and disposition of the depositor. *Edwards* v. *Martin*, L. R., 1 Eq. 121.

Where shares were held in trust for a shareholder, who could not hold more, knowledge of the facts by a director and the actuaries of the company was not sufficient to take them out of the order and disposition of the trustee. *Re Kidder, e.p. Burbridge*, 1 Dea. 131. See further on the subject of what notice is required to complete the equitable assignment of shares, *post*, par. 39 (5).

Using seal of a company.

Any person authorized to enter into contracts on behalf of a company under seal may use the seal for that purpose. L. J. Cairns said: Whoever, as a matter of practice, manages the affairs of a trading corporation, must of necessity be able to use the seal for those acts which he is authorized to perform. *Re Barned's Banking Company, e.p. Contract Corp.* (2), 37 L. J., Ch. 81, where the seal was affixed by order of three persons who had the chief management of the company.

The affixing a seal by a person who had the custody to a contract which he had no power to enter into was simple forgery. *Bank of Ireland* v. *Evan's Trustees*, 5 H. L. 389; *Mayor of Colchester* v. *Lowton*, 1 P. & B. 244.

(3) Thus where a traffic manager of a railway company entered

into an agreement for the sale of lands on behalf of the company, the company was held bound by that agreement because they had been in the habit of recognizing such agreements entered into by him. *Wilson* v. *West Hartlepool R. Co.*, 34 Beav. 187. Though the judgment was affirmed on appeal (2 D. J. & S. 475; 34 L. J., Ch. 241), it was on the ground of there having been part performance; and L. J. Turner thought there was not sufficient evidence of authority, and that if he, in a few instances, had made contracts for the sale of lands, "it would not be sufficient to establish a general authority to do so in all cases."

Where the plaintiff had planted quicks on the premises of a railway company by leave of one of their servants, it was held that there was sufficient evidence to justify the jury in finding that the same servant had authority to refuse to allow him to remove them. *Giles* v. *Taff Vale R. Co.*, 2 E. & B. 822; 23 L. J., Q. B. 43.

Neither the engine-driver, guard, nor traffic superintendent had implied authority, where an accident had taken place, to make contracts with medical men to assist the injured persons; but such authority might be inferred from the conduct of the directors on former occasions in recognizing similar contracts made by their officers. *Cox* v. *Midland R. Co.*, 3 Ex. 268; 18 L. J., Ex. 65.

In *Newton* v. *Daly*, 1 F. & F. 26, it was left to the jury to determine whether the captain of a cost-book mining company had power to pledge the credit of the company for necessaries, &c. In *Ricketts* v. *Bennett*, 17 L. J., C. P. 17; 4 C. B. 688, it was left to the jury to determine whether the manager had power to pledge the credit of a mining company.

In *Goff* v. *Great Northern R. Co.*, 20 L. J., Q. B. 148, it was left to the jury to determine whether a ticket collector, constable and inspector, had authority to commit a passenger for breach of bye-laws.

The plaintiff had entered into a contract with a company, and had, with the sanction of the engineer of the company, done much extra work; he could not recover for the extra work. *Homersham* v. *Wolverhampton Water Works Co.*, 20 L. J., Ex. 193; 6 Ex. 137.

Liability of companies for fraud, tort, &c.

15. By application of the general law of agency (1) companies are liable for the negligence (2), torts (3), frauds and misrepresentations (4) of their directors, servants and agents (*a*) in the course of their business (5). And persons who have been induced (6) to enter into contracts with companies (7) by such misrepresentations (8), can have those contracts set aside

(*a*) Contractors employed by railway companies to construct their works, are not agents to make the company liable for their torts. *Mudie* v. *London and North Western R. Co.*, L. R., 4 Ex. 244; 20 L. J., Ex. 65. Nor engineers employed in the construction of bridges. *Grote* v. *Chester R. Co.*, 2 Ex. 251. Misrepresentations contained in prospectuses issued by promoters are considered those of companies got up by means of such promoters, *post*, p. 56.

Who are agents.

Par 15. by suit in equity, and be recouped what they may have paid the company on such transactions (9), but this equity will be lost by neglect, laches, delay or acquiescence on their own part, or the intervention of circumstances making it impossible to restore persons to their original position (10).

Principles.

(1) This proposition is merely an application of the general law of agency to companies, and, as will be presently seen, all the recent cases have been treated on that ground; but it is with great diffidence that the proposition is laid down so far as regards the legal liability for the frauds and misrepresentations of their agents. Indeed, there has been considerable divergence of opinion as to whether a person deceived by the directors of a company had any standing in equity; it was formerly contended that as directors have no implied authority to commit fraud on behalf of the company, the company cannot be answerable for the misrepresentations made by the directors or agents of the company. V. C. Knight Bruce said, "Directors cannot be the agents of the body of shareholders to commit a fraud." *Re North of England Banking Co., Dodgson's Case*, 3 De G. & Sm. 85. This opinion was adopted by V. C. Parker, *Re North of England Banking Co., Bernard's Case*, 21 L. J., Ch. 468. 5 De G. & Sm. 283. Again, L. C. Chelmsford said, "The company is represented by its directors, who, for certain purposes, are its agents, but the difficulty is in saying that they are its agents for the purpose of making false representations."

"I wish to guard myself against being considered as acceding to the proposition that directors are to be considered the agents of the company for the purpose of making representations by which the public or the shareholders are deceived." *Re Hull* v. *London Life Assurance Co., Gibson's Case*, 2 De G. & J. 283.

So also L. C. Campbell said, "Clearly there was fraud and gross fraud, and I have no doubt that Mixer was induced by fraud to take his shares. I think, however, that it was a fraud on the part of the directors which cannot be attributed to the company." *Re Royal British Bank, Mixer's Case*, 2 De G. & J. 575; 28 L. J., Ch. 879.

It is to be observed, however, that the decision in each of these cases would be the same in point of fact at the present time. But the reasoning would, if it could be allowed, exonerate companies from the torts (*a*) and neglect committed by their directors and servants as well as frauds. And there seems no reason why it should even stop there: why private persons, principals, should any more be answerable for the wrongful acts of their agents, unless they can be shown to have positively authorized such acts or adopted them.

The view of this subject now adopted by the Court of Chancery has been summed up by L. C. Chelmsford, as follows, "Where a person has been drawn into a contract to purchase shares belonging to a company by fraudulent misrepresentations of the directors, and the directors in the name of the company seek to enforce that contract,

(*a*) In fact, in *Moss* v. *The Birkenhead, &c. R. Co.*, 7 Ex. 56, this seems to have been the case.

or the person who has been deceived institutes a suit against the company to rescind the contract on the ground of fraud, the misrepresentations are imputable to the company, and the purchaser cannot be held to his contract, because a company cannot retain any benefit which they have obtained through the fraud of their agents. But if the person who has been induced to purchase shares by the fraud of the directors, instead of seeking to set aside the contract, prefers to bring an action for damages for the deceit, such an action cannot be maintained against the company, but only against the directors personally." *Western Bank of Scotland* v. *Addie*, L. R., 1 S. & D. 157.

Lord Cranworth also said, "An incorporated company cannot in its corporate character be called on to answer in an action for deceit. But if, by the fraud of its agents, third persons have been defrauded, the corporation may be made responsible to the extent to which its funds have profited by those frauds." *Ib.* 166.

L. C. Chelmsford had previously laid down his opinion that companies were in the same position as private individuals in respect to their liability for the fraud of their agents. "Strictly speaking," he said, "a corporation cannot of itself be guilty of fraud; but where a corporation is formed for the purpose of carrying on a trading or other speculation for profit, such as forming a railway, these objects can only be accomplished through the agency of individuals; and there can be no doubt that if the agents employed conduct themselves fraudulently, so that if they had been acting for private employers the persons for whom they were acting would have been affected by their fraud, the same principle must prevail where the principal, under whom the agent acts, is a corporation." *Ranger* v. *Great Western R. Co.*, 5 H. L. 72.

That companies are in these matters in the same position as other persons will appear, from the following remarks of Lord Cranworth, "If the directors or the secretary acting for them, had fraudulently represented something to him (the plaintiff in the suit) which was untrue, he then adhered to the opinion which he had expressed in the former cases, that the company would have been bound by that fraud. But the principle could not be carried to the wild length that he had heard suggested, namely, that you could bring an action against the company upon the ground of deceit, because the directors had done an act which might render them liable to such an action. That was not the law of the land; nor would it be the law of the land if the directors were the agents of some person not a company." *New Brunswick R. and Land Co.* v. *Conybear*, 31 L. J., Ch. 307; 9 H. L. 725. See also remarks by the same judge, *post*, 57, in the *National Exchange Bank* v. *Drew*.

It must be borne in mind, however, that the foregoing opinions with respect to the liability at law for the frauds of agents were given when such liability was not in issue, and cannot be considered to outweigh the judgment of the Exchequer Chamber in the case about to be considered, in which, however, these opinions do not appear to have been cited in argument.

Liability at law for fraud.

(2) That was an action against a company for the misrepresentation of their manager in suppressing certain facts, the suppression of which induced the plaintiff to supply goods to a customer of theirs.

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It was held that the defendants would be liable for such fraud in their agents, and that the fraud was properly charged as their fraud in the declaration. *Barwick* v. *English Joint Stock Bank*, L. R., 2 Ex. 259; 36 L. J., Ex. 147. In giving the judgment of the court, Willes, J., said, "But with respect to the question whether a principal is answerable for the act of his agent in the course of his master's business, and for his master's benefit, no sensible distinction can be drawn between the case of fraud and the case of any other wrong. The general rule is, that the master is answerable for every such wrong of the servant or agent as is committed in the course of the service and for the master's benefit, though no express contract or privity of the master be proved." After enumerating cases to which that principle has been applied, he continued, "In all these cases it may be said, as it was said here, that the master has not authorized the act. It is true that he has not authorized the particular acts, but he has put the agent in his place to do that class of acts, and he must be answerable for the manner in which the agent has conducted himself in doing the business, which it was the act of his master to place him in."

Torts and negligence.

(3) A railway company was held to be liable for false imprisonment by their servants, who had authority to give persons offending against the bye-laws of the company into custody. *Goff* v. *Great Northern R. Co.*, 30 L. J., Q. B. 148. Similarly, in an action for assault and imprisonment, a company was held liable. *Eastern Counties R. Co.* v. *Brown*, 20 L. J., Ex. 196; 6 Ex. 314.

Where a station master detained in custody a person for not paying a fare for the carriage of a horse, the company was not liable, as the company itself had no power to give him into custody for that purpose. Blackburn, J., said, "There can be no doubt that, where a railway company or any other body have on the spot a person acting as their agent, this is evidence to go to the jury that the person has authority from them to do all those things on their behalf, which the exigencies of their business require—all such things as somebody must make up his mind on behalf of the company whether they should be done or not, and the fact that the company are absent and that an appointed person is there to manage their affairs, is *primâ facie* evidence that he was clothed with the authority. The plaintiff was not given into custody for any offence for which there was any power given by the act to the company to take him into custody, and it cannot be inferred from the employment of the station master that the company authorized him to do acts which they themselves had no power to do." *Poulter* v. *The London and South Western R. Co.*, 16 W. R. 309.

It is thought, however, that the principle of this case can ultimately hardly stand, for it seems unreasonable that a principal should be responsible for the haste or want of knowledge of facts of the agent, but should not be responsible for his ignorance of law, the knowledge of which is necessary for him to discharge his ordinary duties (*a*).

A company has been held liable for wrongful seizure of goods;

(*a*) In the words of Willes, J., *ante*, note (2), the company had put their agent in their place to do that *class* of acts.

Maud v. *Monmouthshire Canal Co.*, 4 M. & Gr. 425; *Smith* v. *Birmingham Gas Co.*, 1 Ad. & El. 526: for wrongful detention of bank notes; *Yarborough* v. *Bank of England*, 16 East, 6: for breach of the common law duty imposed on carriers to carry goods safely; *Marshall* v. *York R. Co.*, 21 L. J., C. P. 34; *Tatton* v. *Great Western R. Co.*, 29 L. J., Q. B. 184: for libel; *Whitfield* v. *South Eastern R. Co.*, E. B. & E. 115 (*a*): for personal injury, from the negligence of servants in laying down gas pipes carelessly: *Scott* v. *Mayor of Manchester*, 1 H. & N. 59: for careless driving; *Green* v. *London General Omnibus Co.*, 7 C. B., N. S. 290; *Limpus* v. *London General Omnibus Co.*, 1 H. & C. 526; 32 L. J., Ex. 34: for injury to person, occasioned by the breaking down of a bridge negligently constructed (the negligence of the company being, in not seeing that an efficient engineer was appointed); *Grote* v. *Chester R. Co.*, 2 Ex. 251.

See further on this subject, *Hodges on Railways*, Part II., Sect. IV. and V.

Certificates of shares were deposited with a broker for safe custody; he sold them, forged transfers and handed over the certificate. The company registered the purchaser as member, and gave him a fresh certificate. He resold the shares. On the forgery being discovered the name of the real owner was placed on the register of members. The last purchaser brought an action against the company and recovered his purchase money from them. *The Bahia and San Francisco R. Co.*, *Re Tritton*, 37 L. J., Q. B. 176.

A company has also been made liable in damages on account of their servants acting innocently on forged transfers of shares. *Bank of Ireland* v. *Evan's Charity Trustees*, 5 H. L. 389; *Orr* v. *Union Bank of Scotland*, 1 Macq. 513.

The company is liable for any damages incurred by reason of a person's name being improperly kept on or omitted from the register of shareholders. See *post*, C. A. 1862, s. 35.

A dock company was held liable for damages to a ship incurred through acting on a notice inserted in a newspaper as to the depth of the channel leading up to their docks. *Williams* v. *Swansea Harbour Co.*, 14 C. B., N. S. 845.

An injunction was granted to restrain a company from creating a nuisance. *Tipping* v. *St. Helen's Smelting Co.*, L. R., 1 Ch. 66. See also *Semple* v. *London and Birmingham R. Co.*, 1 R. C. 120, where the injunction was refused because the plaintiff's right had not been established at law.

Frauds in equity.

Direct representations.

(4) That misrepresentations are imputed to a company, when made by their directors, servants and agents, in the course of their duty, was stated by L. J. Turner as follows, "I hold that directors being in the position of trustees, their *cestuis que trustent*, the members of the company, cannot be permitted by this court to retain monies acquired by means of a sale made by them, which in the eye of this court is fraudulent. I speak only of representations made in the course of

(*a*) Reports issued to the shareholders reflecting on the conduct of an agent of the company, were held privileged. *Lawless* v. *Anglo-Egyptian Oil Co.*, 17 W. R. 498.

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the progress of the negotiation for such sale. Now that a company may not generally be bound by the acts of their secretary I also agree, but here the secretary was the agent of the directors in effecting this sale. His acts, therefore, were the acts of the directors; and I think, therefore, that the company must be bound by them." *Conybear* v. *New Brunswick R. and Land Co.*, 31 L. J., Ch. 456; 1 D. F. & J. This was overruled in the House of Lords on the facts.

Misrepresentations made by a manager of a bank in the course of his duty will be imputed to the company. *National Exchange Bank of Glasgow* v. *Drew*, 2 Macq. 103; *Western Bank of Scotland* v. *Addie*, L. R., 1 S. & D. 155.

Prospectus.

Most of the cases where it has been attempted to set aside contracts on account of the misrepresentation of companies have arisen on contracts to take shares, and, for this purpose, misrepresentations contained in prospectus stating the nature of the company are considered the misrepresentations of the company. *Oakes* v. *Turquand*, L. R., 2 E. & Ir. 525; 36 L. J., Ch. 949, and numerous other cases below. *Direct Exeter and Plymouth R. Co., e.p. Parbury*, 3 De G. & Sm. 49, must now be considered bad law.

It is conceived that such misrepresentations would form no ground for an action at law.

Reports and accounts.

Reports made and accounts rendered by directors in the course of their duty, though made and issued to the shareholders only, as to state of the affairs of the company, are considered the representations of the company, not only to the shareholders but to the public, if they are published and circulated by the authority of the directors or a general meeting. But such reports and accounts, made and issued to the shareholders, are not the representations of the company to a person who obtains knowledge of their contents only from private sources.

The various judgments with respect to this part of the law are very conflicting, both on account of the view formerly taken by the courts of equity as to the difference between companies and other persons as to their liability for the fraud of their agents (*supra*), and from its having been considered that reports made to shareholders could not be considered reports made by them. The real question, however, seems to be, whether the person deceived has obtained knowledge or confirmation of knowledge previously obtained through persons he has a right to consider authorized by the company to afford such information. No doubt many reports made and accounts rendered, and circulars sent to the shareholders, are intended for their private information, and there need be no reason why they should go further; but it is apprehended that the individual shareholders, who, as will be seen hereafter (*post*, par. 36), are strangers to the company, have a right nevertheless to consider such matters information given to them by the company. Moreover, it is conceived that many of such matters, such as reports made to the general meetings of railway companies, are of so public a nature that they must be considered as issued to the world at large (*a*). It sufficiently appears from the following extracts

(*a*) V. C. Kindersley said that he had decided *Brockwell's Case* on

that the above proposition is that which the courts of equity now adopt.

In *National Exchange Bank of Glasgow* v. *Drew*, 2 Macq. 103, Lord Cranworth said, "What is the consequence of the company receiving a report and publishing it to the world? I confess that, in my opinion, from the nature of things and from the exigencies of society, that must be taken as between the company and third persons to be a representation by the company. The company as an abstract thing can represent or do nothing, it can only act by its managers, when therefore the directors, in the discharge of their duty fraudulently (for I assume this to be so), for the purpose of misleading others as to the state of the concerns of the company, represent the company to be in a different state from that in which they know it to be, and the persons to whom the representation is addressed act upon it in the belief that it is true, I cannot think that society can go on without treating that as a misrepresentation by the company. Otherwise companies of this sort would be in this extraordinary predicament, that they might employ, nay, must employ, agents to carry on their concerns, and that those agents might make representations be they ever so false, and ever so fraudulent, and yet that the company might and must benefit by those misrepresentations." *National Exchange Bank of Glasgow* v. *Drew*, 2 Macq. 103. And again, in the same case, Lord St. Leonards said, "I have certainly come to this conclusion, that if representations are made by a company fraudulently for the purpose of enhancing the value of their stock, and they induce a third person to purchase stock, those representations so made to them for that purpose do bind the company. I consider representations by the directors of a company as representations by the company; although it may be representations to the company, it is their own representation." These remarks are sanctioned by Lord Chelmsford in the most recent case on the subject, *Western Bank of Scotland* v. *Addie*, L. R., 1 S. Ap. 156. Again, Lord Westbury said, "If reports were made to the shareholders of a company by their directors, and the reports were adopted by the shareholders at one of the appointed meetings of the company, and those reports were afterwards industriously circulated, undoubtedly representations contained in those reports must be taken after their adoption to be representations and statements made with the authority of the company, and therefore binding the company. And if those reports, having been industriously circulated, should be clearly shown to have been the proximate and immediate cause of shares having been bought from the company by any individuals, undoubtedly it would be impossible, consistently with the principles of equity, to permit the company to retain the benefit of that contract, and to keep the purchase-money

the principle that the report of a joint stock company was in effect a public document. *Leeds Banking Co. e.p. Barrett*, 2 Dr. & Sm. 419; 5 N. R. 460. *Brockwell's Case* had been overruled by *Mixer's Case:* but the reasons of V. C. Kindersley were not questioned, and have since been expressly approved in the House of Lords. *Western Bank of Scotland* v. *Addie*, L. R., 1 S. Ap. 155.

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that had been so paid." *New Brunswick R. and Land Co.* v. *Conybear*, 31 L. J., Ch. 302; 9 H. L. 725.

The cases where this principle has been directly considered are:— *National Exchange Co. of Glasgow* v. *Drew*, 2 Macq. 103, where the company sued for money lent to purchase shares in it: the defendants successfully resisted on the ground that they had bought the shares as part of an arrangement with the company which they had been induced to enter into by the false statements contained in reports of the directors to the shareholders and false representations of its managers. *Re Royal British Bank, Brockwell's Case*, where V. C. Kindersley removed the name of a shareholder from the list of contributories on the ground that he had been induced to take the shares through the fraudulent report of the directors. *Deposit and General Life Assurance Co., e.p. Ayres*, 25 Beav. 513; 27 L. J., Ch. 579, was a similar case. *Re Royal British Bank, Nicholl's Case*, 3 De G. & J. 387, where it was attempted to make a transferor of shares contributory on the ground, among others, that the transferee had been induced to buy the shares on account of the false reports of directors. The doctrine as now understood was much questioned and by the Lord Chancellor; his dissent from it was made the ground of his decision, but the decision on the facts would still be maintained as the shares were not taken from the company (see *post*, note (7), p. 60). *Royal British Bank, Morris's Case*, 4 De G. & J. 575, which was a similar case to *Brockwell's Case* and the decision of V. C. Kindersley was reversed; in this case also the present doctrine was called in question, but the true ground on which the case rests is that the contract could not be avoided, owing to its being impossible to restore the parties to their former position. *The New Brunswick R. and Land Co.* v. *Conybear*, 31 L. J., Ch. 297; 9 H. L. 711, which was a suit to set aside a contract to take shares on the ground that the plaintiff had been induced to take them through the fraudulent reports of directors; the bill was dismissed because the reports did not contain fraudulent misrepresentations.

And *The Western Bank of Scotland* v. *Addie*, L. R., 1 S. Ap. 155, which was a suit in a Scotch court to rescind a sharetaking contract, and for *restitutio in integrum;* which was refused, inasmuch as circumstances had intervened to prevent parties being restored to their former position.

The Royal Bank of Australia, e.p. Meux's Exors., 2 D. M. & G. 535. L. St. Leonards said, "This is no doubt a case which tries the doctrine of law and equity very strongly, because W. Meux himself was an original wrongdoer, and his release is to be obtained for the benefit of his assets. But it cannot be endured that any body of shareholders shall be at liberty to say that their directors are to make a representation on the faith of which parties are to act and distribute assets, and that the general body are not to be bound by those representations. It would require a very strong case to induce me to release the general body from the effect of representations of the directors, though improperly made, but which led to the distribution of assets. In answer to those seeking to recal the assets so distributed, I should be more disposed to hold that the directors who had made the misrepresentations should be personally liable to the general

body for any losses sustained by reason of such misrepresentations, than to visit upon legatees the consequences of those misrepresentations."

Vice-Chancellor Kindersley, in commenting on *Brockwell's case*, said, "It had been laid down (I do not say it had been actually decided, but the opinion of some of the most eminent judges of the present day had been enunciated), that if in a body like this, consisting of a very great number of shareholders, the directors, whose duty it is to present a balance-sheet or report to the body at large containing a representation of the state of the affairs of the company—if that body, exercising that duty or that function, make a representation which is entirely false, and if that is made to a public and general meeting, although there be no order to publish it either by the directors or the body at large, from the very nature of the case it must be made public. It is not like a matter where there is a small partnership between two or three persons, and one being instructed to report on its concerns, reports to his two partners; for here is the acting body of a company reporting to a number of members at a general meeting, and, of course, the transactions that there take place, though there may be a resolution to keep secret, will transpire and be made public." *National Patent Steam Fuel Co., e.p. Worth*, 4 Drew. 529; 28 L. J., Ch. 589.

A company is liable as against retiring shareholder for false balance-sheets. *North of England Banking Co., e.p. Holme*, 22 L. J., Ch. 226; 2 D. M. & G. 113.

Such acts must be done in the service of the company.

(5) That a company is only liable for the acts of its agents in the performance of their duties sufficiently appears from all the above cases. In further illustration of this are the following cases:—A company was not liable for injuries received from the bite of a dog kept on its premises, though it was proved that some of its servants were aware that it was vicious. *Styles* v. *Cardiff Steam Boat Co.*, 4 N. R. 483. Misrepresentations by an officer of a company as to the effect of a deed which it is not his duty to afford, will not relieve the party signing it. *Athenæum Life Insurance Co., Sheffield's Case*, John. 531; 28 L. J., Ch. 325. Representations made by a clerk of a company to a friend to induce him to take shares, are not imputable to the company (*Royal British Bank, e.p. Frowd*, 30 L. J., Ch. 322); nor those of a law agent (*Burnes* v. *Pennal*, 2 H. L. 497); nor the unofficial statement of a secretary: "it would be extremely dangerous to hold the company liable in consequence of a loose general conversation held with its secretary."—*Per* Lord Westbury, *New Brunswick R. and Land Co.* v. *Conybear*, 11 H. L. 711; 31 L. J., Ch. 297.

Must be inducement.

(6) Misrepresentation, to be a ground for avoiding a contract to take shares, must have been in the mind of the applicant. *The Western Bank of Scotland* v. *Addie*, L. R., 1 Sc. & D. 145; *Re Royal British Bank, Nichol's Case*, 3 De G. & J. 387, where it was said that the burden of proof lay on the party who made the misrepresentation to show that it was an inducement; but in an action at law for damages the contrary was laid down. *Jennings* v. *Broughton*, 5 D. M. & G. 126; *Robson* v. *Devon*, 3 Jur., N. S. 576; 4 Jur., N. S. 245. It need not be the only reason which induced the allottee to apply for shares. *Royal British Bank, Nichol's Case*, 3 De G.

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& J. 387, where there were also misrepresentations not imputable to the company. In *re The Leeds Banking Co., e.p. Barrett*, 34 L. J., Ch. 558, it was held, that reports issued in February would not be proximate cause for taking shares in June (the rights of creditors had accrued through a winding-up order, but that point was not in the mind of the court). In an action for the return of deposit paid on allotment of shares in an abortive company, where the allottee had authorised the expenditure of deposits in preliminary expenses by executing a subscription contract, on account of the fraud of the provisional director in issuing a prospectus falsely stating that all the shares had been taken up it was held that the matters were separate. *Watts* v. *Salter*, 10 C. B. 476; 20 L. J., C. P. 43. The contrary, however, would appear from *Watson* v. *Charlemont*, 18 L. J., Q. B. 65; 12 Q. B. 856.

As affecting contracts with third persons.

(7) Misrepresentations made by the company are no ground for setting aside a contract to purchase shares from a third person. *Re The Liverpool Borough Bank, e.p. Duranty*, 28 L. J., Ch. 37; 26 Beav. 268; *Re The National Patent Steam Fuel Co., e.p. Worth*, 4 Drew. 529; *Northumberland and Durham District Banking Co., e.p. Bigge*, 28 L. J., Ch. 50; *Mexican and South American Co., e.p. Grisewood*, 28 L. J., Ch. 769; 4 De G. & J. 544.

Where shares had been transferred to a person as fully paid up on the misrepresentation of the company, he got his name removed from the register by suit in equity. *Ashworth* v. *Bristol R. Co.*, 15 L. T. 561.

What amounts to misrepresentation.

(8) The representations must be made with intention to deceive. A representation that two specified individuals would execute the deed of settlement of a company honestly made, but erroneous, did not exonerate a person induced to take shares on that account. *Re The Hull and London Life Assurance Co., Gibson's Case*, 2 De G. & J. 275. See also *Kennedy* v. *Panama Mail Co.*, L. R., 2 Q. B. 580; 36 L. J., Q. B. 260; *Burnes* v. *Pennel*, 2 H. L. 497; *National Exchange Bank of Glasgow* v. *Drew*, 2 Macq. 103.

Must be *dolus dans locum contractui.*

B. had purchased shares held in trust for a company. The secretary had misrepresented the state of the company to him. The sale stood, the misrepresentation having no connection with it. *North of England Banking Co., e.p. Barnard*, 5 De G. & Sm. 283. Compare *Taylor* v. *Ashton*, 11 M. & W. 401; 12 L. J., Ex. 363.

Must be of fact.

Misrepresentation, to be a ground for avoiding a contract to take shares, must be of fact, and not mere conclusions of general opinion. *The New Brunswick Land and R. Co.* v. *Conybear*, 31 L. J., Ch. 297.

And a puffing or mere high colouring is not sufficient.

"Those who issue a prospectus holding out to the public the great advantages which will accrue to persons who will take shares in a proposed undertaking, and inviting them to take shares on the faith of the representations therein contained, are bound to state everything with strict and scrupulous accuracy; and not only to abstain from stating as facts that which is not so, but to omit from stating no one fact within their knowledge, the existence of which might in any degree affect the nature, or extent, or quality of the privileges and advantages which the prospectus holds out as an inducement to take shares."—*Per* Kindersley, V. C., *New Brunswick and Canada R. and Land Co.* v. *Muggeridge*, 1 Dr. & Sm. 38; 30

L. J., Ch. 249. "In an advertisement of this description, some allowance must always be made for the sanguine expectations of the promoters of the adventure, and no prudent man will accept the prospects which are always held out by the originators of every new scheme, without considerable abatement. But although in its introduction to the public, some high colouring, and even exaggeration in the description of the advantages which are likely to be enjoyed by the subscribers to an undertaking may be expected, yet no misstatement or concealment of any material facts or circumstances ought to be permitted. In my opinion, the public, who are invited by a prospectus to join in any new adventure, ought to have the same opportunity of judging of everything which has a material bearing on its true character as the promoters themselves possess."—*Per* Lord Chelmsford, *Central R. Co. of Venezuela* v. *Kisch*, L. R., 2 H. L. 113; 36 L. J., Ch. 852. It is not because a prospectus contains exaggerated views of the advantages of the company to which it relates, or contains some casual or trifling errors or inaccuracies, that this court would, in my opinion, be justified in setting aside a bargain founded upon it; but, on the other hand, this court expects and requires that where a contract is founded upon statements made by one of the parties to it, those statements should be fair, honest, and *bonâ fide*."—*Per* L. J. Turner, *Kisch* v. *Central R. Co. of Venezuela*, 3 De G. & J. 135; 34 L. J., Ch. 552.

May be ambiguous.

It does not matter that another construction can be put on the words which constitute the misrepresentation. *Clark* v. *Dixon*, 8 C. B., N. S. 453.

Suppression of facts.

The omission of that which in fairness ought to be stated is misrepresentation; *New Brunswick R. Co.* v. *Muggeridge*, 30 L. J., Ch. 222; 1 Dr. & Sm. 363; in fact, the same rules apply as in avoiding an ordinary contract between individuals. *The Central R. Co. of Venezuela Co.* v. *Kisch*, L. R., 2 E. & I. 99; 36 L. J., Ch. 849.

Lord Romilly (L. R., 2 E. & I. 125; 36 L. J., Ch. 858) said, "If one man makes a false statement, which misleads another, the way in which that is to be treated affords the example for the way in which a contract is to be treated where a company makes a false statement which misleads an individual."

In that case it was held, that the phrase "available capital of the company" was a deceptive description of capital which might be raised under the borrowing powers of the directors. It seems, also, "that the contractor was a responsible person," was improper when it turned out that he was not. And, it being stated that the contractor had guaranteed 2½ per cent. on paid up capital during the construction of the works, it was improper to omit that the guarantee was limited to 20,000*l*. *Ib.*

Need not be known to be false.

If a false statement in a prospectus is not actually known to be false, the persons issuing it not having good reason to suppose it to be true, it is a good ground to avoid the contract. A prospectus described in falsely favourable colours a mine, for the purpose of working which a contract had been entered into. The mine was found worthless; the directors rescinded the contract, and entered into another. It was held, that a shareholder who had taken shares on the faith of the prospectus was entitled to restrain the directors prosecuting an action against him for calls, though the directors had themselves been deceived, as they ought to have made further in-

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quiries. *Smith* v. *The Reese River Silver Mining Co.*, L. R., 2 Eq. 265. See also *Re Canadian Native Mining Co.*, *e.p. Fox*, L. R., 5 Eq. 118; *Rawlins* v. *Wickham*, 1 Giff. 355; 2 De G. & J. 304.

Variation between the prospectus and memorandum.

A statement in the prospectus of the objects of the company which materially differs from the objects as specified in the memorandum of association, is also considered a misrepresentation by the company to the extent of making a contract to take shares founded on the prospectus voidable. It has been considered that an allotment of shares in such a case was a variance of the terms of contract contained in the application, and the contract held on that account void. *Re Scottish Universal Finance Bank, Ship's Case*, 2 De G. & S. 544, L. J. Knight Bruce said, "I think he (Ship), agreed to one thing, and the appellant (the official liquidator) desires that he should be taken to have agreed to another:" but it is now settled that the contract is only voidable, and is treated so on the ground of the applicant having been deceived by the prospectus. See also *Merionethshire Slate and Slab Co.*, *e.p. Rye*, 3 Jur., N. S. 460.

What variation is sufficient.

In the following cases it has been held that the difference between the prospectus and memorandum was sufficient to render the contract to take shares voidable:—Where the prospectus stated the object of the company was to cultivate a particular tea plantation, the objects expressed by the memorandum were to cultivate tea plantations generally in India; *Re The Cachar Co.*, *Laurence's Case*, 2 Ch. 412; 36 L. J., Ch. 490. Where the prospectus stated the company was formed for the purpose of acquiring and extending particular iron works, and the memorandum extended the objects to working iron mines and works in Russia generally (it was doubtful whether the works were even confined to Russia); *Re The Russian Vyksounsky Ironworks Co.*, *e.p. Stewart*, 1 Ch. 575; 35 L. J., Ch. 758. Where the prospectus stated that the company was formed for the purchase and to carry on the business of a bank, and objects in the memorandum extended to the business of bill brokers and general agents, winding up the estates of partnerships and companies, and making advances and every description of financial business; *Barned's Banking Co.*, *Peel's Case*, 15 W. R. 391, this was reversed on other grounds. Where the prospectus stated the company was to be formed for working a particular slate quarry, and the deed of settlement extended the objects to the purchase of slate quarries in Great Britain and Ireland; *The Merionethshire Slate and Slab Co.*, *e.p. Rye*, 3 Jur., N. S. 460. Where the scheme was for a life assurance and loan company and sick benefit society, and so much of the scheme as related to the sick benefit society was abandoned; *Re The Amazon Life Assurance Co.*, *e.p. Blackburn*, 3 Drew. 409.—This was reversed on appeal on the ground that Blackburn had notice of the change, the letter of allotment and certificate of shares being in name of a company differing from that on the prospectus by the omission of the words "sick benefit society." *Hutchinson's Case*, 8 De G. M. & G. 177; 25 L. J., Ch. 722.

Effect of notice of variance.

Other cases where contracts have been held voidable.

Where a provisional committee had issued an advertisement, falsely stating that they had completed the allotment of shares, and apologizing to disappointed applicants: in an action for the return of a deposit by a person to whom shares had been allotted on terms differing from his application, it was held that the jury were war-

ranted in saying that the advertisement was a fraudulent misrepresentation, and a material inducement to the plaintiff to pay his money. *Wonter* v. *Shairp*, 17 L. J., C. P. 38; 4 C. B. 404.

Where a report was made to the committee of management, showing that the essential statements in a prospectus were false: Held, that an allottee might recover back his deposits paid in ignorance of the report. *Jarrett* v. *Kennedy*, 6 C. B. 319. Compare *Life Assurance Co. of England, e.p. Blake*, 32 L. J., Ch. 278; 34 Beav. 634.

The prospectus of a company stated that more than half the shares constituting the first issue had been subscribed for, and that the company had contracted for the purchase of two estates, upon one of which the vendor had expended a large sum in improvements. In fact, the chief promoter had agreed to take by himself or his nominees more than half the first issue of shares, but had taken only 200, the rest having been allotted to persons to whom he sold them in the market before allotment. The immediate vendor to the company had not expended any sum in improvements on the one estate, nor was there proof that any one else had; and, as to the other estate, he had merely entered into a verbal contract with the owner for the purchase of it. It was held, there was sufficient misrepresentation to entitle the allottee to have the contract cancelled. *Ross* v. *The Estates Investment Company*, 3 Eq. 122; 3 Ch. 682; 36 L. J., Ch. 54; 37 L. J., Ch. 873. A statement in a prospectus that "the directors and their friends have subscribed a large portion of the capital, and they now offer to the public the remaining shares," was held fraudulent where the directors had only taken ten paid up shares each, for which they were recouped, 140 only were taken through their influence, and somewhat less than one-half the shares had been taken or agreed to be taken. *Henderson* v. *Lacon*, L. R., 5 Eq. 249.

A shareholder was relieved on account of misrepresentation as to the amount of capital subscribed and suppression of facts as to the purchase-money. *Kent* v. *The Freehold Land and Brickmaking Company*, 4 Eq. 249.

Where it was falsely stated that a lease had been obtained, deposits paid on taking shares in a cost-book company were recovered by suit in equity. *Chester* v. *Spargo*, 16 W. R. 576.

Cases where contracts have been held not voidable.

In a prospectus of a company for making railways in a colony, the omission to state that a deposit has been paid, which is liable to be forfeited, is not an improper concealment. And where it was stated that a foreign government had promised a concession of lands, an omission of certain qualifications was not held improper. *The Central R. Co. of Venezuela* v. *Kisch*, 36 L. J., Ch. 849; L. R., 2 E. & Ir. 99. The court refused to set the contract aside on the ground that the projectors had not stated what shares had been allotted to themselves and other persons connected with the scheme, and that they had appointed an agent for the construction of works with a commission of 4 per cent. *Pulsford* v. *Richards*, 17 Beav. 87; 22 L. J., Ch. 559.

Prospectus stated 35,000 shares were allotted, the omission to state that deposit had been paid on only 18,160 was not such a concealment as to vitiate the contract. *Vane* v. *Cobbold*, 1 Ex. 798. A statement that there was a guarantee of 15 per cent. for five years, when there was no guarantee other than a verbal one by the

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promoters, was not a misrepresentation sufficient to avoid the contract. *Kent* v. *The Freehold Land and Brickmaking Company*, L. R., 4 Eq. 588. Nor was a statement that 10,000 shares had been subscribed for, when only 7,500 had been taken. *Green* v. *The General and Provident Assurance Company*, 18 L. T. 500. When the prospectus stated that the company would commence operations with six steam ships of a certain description, which was not the fact, and there had been a change of directors before allotment, there was not sufficient ground to relieve an allottee from his shares. *Hallows* v. *Fermie*, L. R., 3 Ch. 467.

A statement that 100,000 was fully paid up, when there was only 84,000. *London and Eastern Banking Corp., e.p. Longworth's Exors.*, 29 L. J., Ch. 56. A company was formed to work a concession vested in a contractor, which he transferred to the company, and obtained from them a contract. He gave persons who became directors certain advantages. The suppression of the dealings between the contractor and the directors in a prospectus was not a misrepresentation to avoid a contract to take shares from the company. *Heymann* v. *European Central R. Co.*, L. R., 7 Eq. 154.

Specific relief.

(9) The contract is voidable and not void, and so it has been held that the fact that a person has been induced to take shares by the misrepresentation of the company, is no defence in proceedings by creditors of the company against individual shareholders. *Henderson* v. *Royal British Bank*, 7 El. & B. 356; 26 L. J., Q. B. 112; *Daniel* v. *Royal British Bank*, 1 H. & N. 681.

Specific relief in respect of such contracts.

In *Kisch* v. *The Central R. Co. of Venezuela*, 34 L. J., Ch. 545; 3 D. J. & S. 122, the company was ordered to repay the plaintiff what they had received from him, with interest at 4 per cent. The contract was treated as void, but it has since been decided that such contracts are only voidable; *Oakes* v. *Turquand*, L. R., 2 E. & Ir. 325; 36 L. J., Ch. 919, and other cases, *post* (10); and therefore the allottee is entitled to have his name removed from the register of shareholders, and a declaration that the contract ought to be set aside with costs. *Ross* v. *The Estates Investment Company*, L. R., 3 Eq. 139; 36 L. J., Ch. 873. See also *Henderson* v. *Lacon*, L. R., 5 Eq. 249, where no interest was allowed.

Deposits paid on application for shares may be recovered at law where the inducement to apply has been a misrepresentation. *Wontner* v. *Shairp*, 17 L. J., C. P. 38; 4 C. B. 404; *Jarrett* v. *Kennedy*, 6 C. B. 319.

A plea to an action for calls, that the defendant was induced to become a shareholder by the fraud of the plaintiffs, that he had never recognized since notice of the fraud any rights or liabilities in him as such shareholder, nor received any benefit from his shares and that within a reasonable time after notice of the fraud he had repudiated the shares, and given notice to the plaintiffs of his repudiation, was good. *Bwlch-y-Plwn Lead Mining Co.* v. *Baynes*, L. R., 2 Ex. 325; 36 L. J., Ex. 183; *Glamorganshire Coal and Iron Co.* v. *Irvine*, 4 F. & F. 947.

Equity lost by laches.

(10) An applicant for shares on the faith of the prospectus is bound to satisfy himself of the truth of the statements contained in it, and, when the company is formed, how far it tallies with the memorandum of association, by any reasonable means of information

he may have. L. C. Chelmsford said, "If a person purchases shares in a company upon the faith of a prospectus, and is referred to any document which will show the untruth or inaccuracy of any of its statements, and chooses not to make use of his means of knowledge, but to continue in a state of wilful ignorance of the facts, he cannot afterwards be heard to complain that he has been deceived." *Hallows* v. *Fernie*, L. R., 3 Ch. 477.

An applicant was held to have notice of the contents of an agreement referred to in the articles of association. *Peninsular, West Indian and Southern Bank, e.p. Dixon*, 15 W. R. 480. *Semble*, where the prospectus stated the articles might be seen at a certain place, notice of the contents would be implied. *Re Hop and Malt Exchange and Warehouse Co., e.p. Briggs*, L. R., 1 Eq. 483; 35 L. J., Ch. 320.

By laches and delay.

And he must, if the memorandum and articles are not in existence at the time of his application, examine their contents within a short period, and, to get rid of his liability on the ground of variation from the prospectus, take proceedings at once. L. applied for shares 4th Sept. 1865. The company was registered 14th Sept. Allotment was made to L. on 11th Oct., he paid the deposit on the 14th Oct., he was supplied with a copy of the memorandum and articles 14th May, 1866, he did not repudiate till the Sept. following. L. J. Cairns held that even in May his equity was gone, for that within a reasonable time after the registration of the company he must be held either to have acquainted himself with the memorandum and articles, or to have been content to waive any examination of them; and *semble*, such reasonable time had expired on the 14th Oct., when he paid the deposit. *Re Cachar Co., Lawrence's Case*, L. R., 2 Ch. 412; 36 L. J., Ch. 490. An application for shares was made 18th April. Company was registered 28th April. Allotment was made on 29th April. Deposit was paid on 21st May. On July 17th application to remove the name of allottee from register of shareholders was made. *Re The Russian Vyksounsky Ironworks Co., Kincaid's Case*, L. R., 2 Ch. 412; 36 L. J., Ch. 499. In *Re Barned's Banking Co., e.p. Peel*, L. R., 2 Ch. 674; 36 L. J., Ch. 757, L. J. Cairns said, "It is the bounden duty of a person to ascertain at the earliest practicable moment what is the charter or title deed under which the company in which he has agreed to become a shareholder is carrying on business. I think he ought to be held bound to look at the memorandum and articles before he applies for shares; but even when the memorandum and articles are not in existence at the time, I think, at the very latest, when he receives his allotment of shares he ought to satisfy himself that there is nothing in the memorandum or articles to which he desires to make any objection." See also *Re The Madrid Bank, Wilkinson's Case*, L. R., 2 Ch. 536; 36 L. J., Ch. 489, where Lord Cairns, after similar observations, said, "What length of time will be necessary in each case will depend in some degree upon the circumstances, but there cannot be more than a reasonable time for making the discovery." These conflict with the older cases, *e. g.*, *Re Scottish Universal Finance Bank, Ship's Case*, 2 De G. J. & S. 544; *The Russian Vyksounsky Ironworks Co., Stewart's Case*, L. R., 1 Ch. 574; 35 L. J., Ch. 738, and other cases in the same company.

This doctrine does not go so far as to affect the applicant with

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notice of everything he might find out by diligent inquiry. So, where the prospectus stated, "the engineer's report, maps, plans, &c. may be inspected, and further information obtained at the offices of the company," an allottee of shares was not affected with notice that positive statements in the prospectus were false, though the examination of all those papers would have shown that to be the case. *Central R. Co. of Venezuela* v. *Kisch*, L. R., 3 E. & Ir. 99; 36 L. J., Ch. 849. See also *Langham* v. *The East Wheal Bore Mining Co.*, 37 L. J., Ch. 253.

By delay,

In all cases where it is sought to avoid the contract to take shares on account of misrepresentation, it is necessary that delay should not take place after the applicant has become aware he has been misled. In addition to the cases above, see *Ogilvie* v. *Currie*, 37 L. J., Ch. 541, where there was two months' delay. *Re The Russian Vyksounsky Ironworks Co., Whitehouse's Case*, L. R., 3 Eq. 790; in the same company, *Taite's Case*, L. R., 3 Eq. 795; 36 L. J., Ch. 475. In the latter of which it was held that delay from July 3rd to the beginning of the long vacation was fatal. The facts of these two cases are covered by *Lawrence's Case*. But the principle of that case was not then settled. Delay was excused where the allottee had reason to suppose the directors had already removed his name. *Re The Russian Vyksounsky Ironworks Co., e.p. Neil*, 15 W. R. 894.

Semble, the right to relief is lost by more than three months' delay after knowledge of the facts. *Heyman* v. *European Central R. Co.*, L. R., 7 Eq. 154.

by acquiescence,

The holder of shares on a voidable contract will be held to have waived his right to repudiate them by acting in a manner inconsistent with an intention to do so, as by attempting to sell them; *Re The Hop and Malt Exchange Warehouse Co., e.p. Briggs*, L. R., 1 Eq. 483; 35 L. J., Ch. 320; and *semble*, by taking a transfer of other shares; *Re The Russian Vyksounsky Ironworks Co., Paige's Case*, 15 W. R. 891. The receipt of dividends, attendance at meetings, and similar acts by a member, would imply his acquiescence in the contract, and, even if done before knowledge of fraud, are matters which will be taken into consideration by the court in determining whether there is a proper case to avoid the contract: see *Re The Athenæum Life Assurance Co., e.p. Sheffield*, John. 451; 28 L. J., Ch. 325; *Kent* v. *The Freehold Land and Brickmaking Co.*, L. R., 4 Eq. 588: which cannot be done unless it is possible to place the parties in the same position as before. *The Western Bank of Scotland* v. *Addie*, L. R., 1 Sc. & D. 145.

or because the parties cannot be placed *in statu quo*.

Equity to avoid contract to take shares is lost by intervention of winding-up,

If a winding-up intervenes before an allottee has taken steps to set aside his contract for fraud, he loses his right to do so. This was finally established by the case of *Oakes* v. *Turquand*, L. R., 2 E. & Ir. 325; 36 L. J., Ch. 919, in the House of Lords, where the persons who sought to have their names removed from the list of contributories had only discovered the fraud through the winding-up, and had no other means of doing so. The principle on which this was decided was, that the shareholder, by allowing his name to be placed on the register, held himself out to the world as liable to contribute by analogy to the law of partnership laid down in *Henderson* v. *The Royal British Bank*, 7 El. & B. 356; 26 L. J., Q. B. 112. See also remarks of Lord Justice Cairns in *Re Barned's Banking Co., Peel's*

Case, 36 L. J., Ch. 762 ; though it had been decided in *Re Scottish Universal Finance Bank, Ship's Case*, 2 D. J. & S. 534; *Re The Reese River Silver Mining Co., Smith's Case*, L. R., 2 Ch. 604; 36 L. J., Ch. 618, and many other cases, that the creditors only dealt with the company, and did so subject to any rights the apparent contributories had to repudiate their liabilities, which were looked upon as resulting solely from a contract with the company. *Oake's Case* has been followed in *Kent* v. *The Freehold Land and Brickmaking Co.*, L. R., 3 Ch. 493 ; 37 L. J., Ch. 653, reversing the decision of V. C. Wood, and *Re Cleveland Iron Co., e.p. Stevenson*, 16 W. R. 95. Therefore it seems, that the official liquidator, as representing the creditors, is the proper person to resist the shareholder getting his name removed from the list of contributories. It was held that a director who had been party to the issue of a prospectus differing from the memorandum of association could not appeal from an order removing a person's name from the list of contributories, though he had not taken steps to repudiate his contract before the winding-up. *Dawes* v. *Ship*, L. R., 3 E. & Ir. 343; 37 L. J., Ch. 642.

It may be doubted whether this principle applies to a voluntary winding-up, as it is a proceeding for the benefit of shareholders.

unless steps have been taken to set aside the contract before the winding-up.

And if the allottee institutes proceedings to get rid of his liability before the commencement of the winding-up, though it should intervene before he can carry them to a successful conclusion, he will not thereby be prevented. *Henderson* v. *Lacon*, L. R., 5 Eq. 249 ; *Re The Cleveland Iron Co., e.p. Stevenson*, 19 W. R. 95.

A person who had been induced to take shares through the misrepresentations of the company filed a bill to have the contract set aside, on which proceedings against him to enforce a call were stayed by injunction. The company was wound up on petition of a contributory. He then applied under C. A. 1862, sect. 35, to have his name removed, which was done. *Re Reese River Silver Mining Co., e.p. Smith*, L. R., 2 Ch. 604; 36 L. J., Ch. 618, reversing the decision of the court below. This was afterwards confirmed by the unanimous decision of the House of Lords, L. R., 4 E. & Ir. 64 ; though in *Oakes* v. *Turquand*, L. R., 2 E. & Ir. 325 ; 36 L. J., Ch. 919, it has been disapproved of by L. C. Chelmsford.

Where a shareholder filed a bill to avoid a contract to take shares on account of fraudulent misrepresentation contained in a prospectus, though before it could come to a hearing an order was made to wind up the company, a decree was made in his favour ; *Ross* v. *Estates Investment Co.*, L. R., 3 Eq. 122; 3 Ch. 682 ; 36 L. J., Ch. 54 ; 37 L. J., Ch. 783 ; and it having been arranged between the company and other shareholders who repudiated their shares on the same grounds, that they should not be prejudiced by not filing bills individually pending the decision in *Ross's Case*, their names were removed from the list of contributories. *Estates Investment Co., e.p. Pawl*, 38 L. J., Ch. 318; L. R., 4 Ch. 497.

An agreement was entered into between companies A. and C. for amalgamation. On the footing of the amalgamation, H., a member of company C., applied for shares in company A., which were allotted to him. Shortly afterwards H., and others in a similar position, repudiated their shares on the ground of misrepresentation, and that the amalgamation was *ultra vires*. They acted by the same solicitor.

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One of them, F., filed a bill to set aside the amalgamation. A compromise was effected on terms that the amalgamation should be rescinded, and the names of the shareholders who had taken shares in company A. on account of it should be removed. There was no evidence that H. had employed the solicitor who conducted the suit on the part of F., except to write a letter of repudiation. His name being on the register of members on the winding-up of company A., he was a contributory. *London and County General Agency Association, e.p. Hare*, L. R., 4 Ch. 503.

Liability of companies for neglect of duty.

16. Incorporated companies are liable for breach of public duty committed by their directors on their behalf (1), and in addition to any penalties that may be imposed by statute (2), may be compelled by writ of mandamus to perform statutory requisitions at the instance of any person interested in having those duties fulfilled (3).

(1) *The Att.-Gen.* v. *Bradford Navigation*, 35 L. J., Ch. 609; L. R., 2 Eq. 71, is an instance of an incorporated company being restrained from committing a public nuisance by polluting a stream.

(2) By sections 19, 25, 27, 32, 34, 44, 46, 53 and 54 of C. A. 1862, and sections 22 and 39 of C. A. 1867, penalties are imposed on companies for non-compliance with the provisions of those sections. The mode of enforcing those penalties is provided by C. A. 1862, s. 65.

Prerogative writ of mandamus.

(3) The prerogative writ of mandamus is "the proper remedy to enforce obedience to acts of parliament, and to the king's charter, and in such cases is demandable *ex debito justiciæ*," 5 Bac. Abr. tit. "Mandamus," 7th ed., p. 257.

A company has been compelled to produce its register to a creditor. *R.* v. *Derbyshire R. Co.*, 3 E. & B. 784.

A mandamus has been granted to compel an incorporated trading company to admit persons to offices to which they have been duly elected. *Anon.*, 2 Str. 696; *Da Costa* v. *Russia Co.*, 2 Str. 697. *Semble*, companies may be compelled by mandamus to elect the proper number of directors. *Thames Haven Dock Co.* v. *Rose*, 4 M. & G. 559.

17 & 18 Vict. c. 125.

By the Common Law Procedure Act, 1854, remedy by mandamus was much extended under sect. 68 of that act. Mandamus will be issued to compel a person "to fulfil any duties in the fulfilment of which the plaintiff is personally interested."

For cases in which mandamus will be granted, see *Reg.* v. *Inns of Court Hotel Co., e.p. Rudolph*, 32 L. J., Q. B. 369, and other cases *post*, par. 31 (3); *Reg.* v. *Maraquita Mining Co.*, 1 E. & E. 289; 28 L. J., Q. B. 67.

17. In all companies majorities of shareholders can authorize and sanction matters relating to the management of the affairs of the company, provided such matters do not affect its constitution (1). Companies governed by the Act of 1862 and cost-book mining companies have more extensive powers, the more important to be exercised by means of a special resolution (2). Powers of majorities.

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(1) The principle that, apart from statutory enactment, majorities of shareholders cannot bind a minority in any act relating to the company beyond the purpose for which it was formed, is part of the law of partnership, and has been explained by Lord Eldon as follows: "If six persons joined in a partnership of life assurance, if life assurance it seems clear that neither a majority nor any select part of them, nor five out of the six could engage that partnership in marine insurances unless the contract of partnership expressly or impliedly gave that power; because if this were otherwise, an individual or individuals, by engaging in one specified concern, might be implicated in any other concern whatever, however different in its nature against his consent." "The principles which a court would act upon in the case of a partnership of six must, as far as the nature of the thing will admit, be applied to a partnership of 600." *Natush* v. *Irving*, *Gow on Partnership*, 3rd ed., App. 398. Principle.

This principle has been adopted by the legislature. The power given to alter the articles of association being subject to the memorandum (C. A. 1862, s. 50), this has been held to limit the power to matters not affecting the constitution of the company.

On a similar clause in the Act of 1856, L. J. Turner said, "The fair construction, I think, is that the 33rd section enables three-fourths to make regulations as to the mode of conducting the business of the company, but not to alter the general constitution." *Bryon* v. *Metropolitan Saloon Omnibus Co.*, 3 De G. & J. 128.

In a case of a company under the Act of 1862, V. C. Kindersley said, "Adopting this distinction, the question here was—would not this alteration be an alteration in the constitution of the company? He thought it clearly would. The construction to be put on the contract of the plaintiffs, on entering the company, was that they agreed to any alteration which should be an alteration merely in the management of the company; not so to an alteration in its constitution." *Hutton* v. *Berry*, 6 N. R. 376.

L. C. Westbury expressed himself to the same effect when the matter came before him, the issue of preference shares having been authorized only by an ordinary resolution. *Hutton* v. *Scarborough Cliff Hotel Co.*, 34 L. J., Ch. 643.

If a number of persons meaning to join in a common undertaking and raising a fund, eventually to be increased for the purpose of forwarding the common undertaking, but commencing by deposits, put the deposits into the hands of a committee, with directions to do certain acts. It is not competent for any one or any number of them to withdraw. A single dissenter may insist on the committee proceeding. *Baird* v. *Ross*, 2 Macq. 61.

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A society incorporated by royal charter was restrained from surrendering their charter at the suit of two of the corporators. *Ward* v. *The Society of Attornies*, 1 Coll. C. C. 370; 8 Jur. 1021.

The directors of a projected banking company, not being able to carry out the project to its full extent, determined upon winding-up the affairs and returning to the applicants for shares the deposits made by them. Deposits amounting in the whole to two-thirds of the amount deposited had been returned to the depositors, and the remainder was in course of payment. On a bill filed by purchasers of shares or intended shares, who were dissatisfied with the termination of the affairs of the proposed company: it was held that the directors were justified in the course they had taken, it being morally impossible that the project could have been carried out in its integrity from the events which had happened. *Bank of Switzerland* v. *Bank of Turkey*, 5 L. T., N. S. 549.

Compare *Kent* v. *Jackson*, *post*, p. 72.

This principle does not, however, prevent a majority of shareholders authorizing or sanctioning a particular act not within the scope of the company, and as such beyond the power of the executive, if such particular act conduces to the proper performance of the general object of the company; the test being, as laid down by V. C. Wood, whether the company has by the act in question abandoned or exceeded their purposes. *Featherstonehaugh* v. *Lee Moor Porcelain Co.*, L. R., 1 Eq. 329; 35 L. J., Ch. 87. So also *per* Lord Campbell, *Simpson* v. *Westminster Palace Hotel Co.*, 8 H. L. 712; in this case where an hotel company had let off part of their premises which were too large for their immediate wants, L. J. Turner, though dissenting from the application of the principle to the facts before him, to the same effect said, "I think that in assuming it to be competent to the directors or shareholders to deal with the property *ad interim* before the whole hotel can be opened at their discretion, it is not and cannot be competent to them to deal with it in such a manner as may interfere with the ultimate purposes of the company." 29 L. J., Ch. 566.

Control of directors.

The company has generally control over directors and power to remove them. V. C. Kindersley refused at the suit of one shareholder to enjoin two directors from acting, on the ground, partly, that the shareholders could remove them. "The shareholders," he said, "have it in their own power, if they think fit, at a special general meeting or at a regular half-yearly general meeting to displace these gentlemen, to remove them, and to determine that others shall be substituted for them." *Hattersley* v. *Shelburn*, 31 L. J., Ch. 880. So V. C. Wood, even where a director had been guilty of fraud, "It is for the company to judge how they will punish the directors who have misconducted themselves, either by dismissing them or otherwise, or how they will deal with the whole affair." *Clinch* v. *Financial Corp.*, L. R., 5 Eq. 482; 37 L. J., Ch. 281. And, therefore, the court will not entertain a bill by individual shareholders, seeking merely to restrain persons from acting as directors, on the ground of the invalidity of their title to the office of director. *Mozeley* v. *Aston*, 2 Phil. 790. See also *Orr* v. *Glasgow, &c. Junction R. Co.*, 3 Macq. 799.

Where it was provided that the management of a company should

be intrusted to two persons, it was held that a majority of shareholders could not intrust it to one only. *Davies* v. *Hawkins*, 3 M. & S. 288.

Where the deeds of a company provided that a meeting might remove directors and officers for "negligence, misconduct in office or any other reasonable cause," a reasonable cause was one which a meeting thought reasonable. *Inderwick* v. *Snell*, 2 M. & G. 216; 19 L. J., Ch. 542.

Matters connected with the business of the company.

A life insurance company cannot engage in the business of a marine insurance company. *Natush* v. *Irving; Gow on Partnership*, 3rd edit., App. 389; *Phœnix Life Insurance Co., Howard's Case*, 1 H. & M. 433; *Ibid., Burgess's Case*, 2 J. & H. 441; 31 L. J., Ch. 749. Where the object of a company was to trade between London and Oporto, the majority could not bind the minority to trade between London and Lisbon. *Simpson* v. *Denison*, 10 Hare, 51.

The majority of a railway company cannot engage the company in the business of coal merchants. *Att.-Gen.* v. *Great Northern R. Co.*, 1 Dr. & Sm. 154.

A fire insurance company passed a resolution authorizing the directors to pay certain losses not strictly covered by the policies they had issued. It being shown that other insurance companies did the same thing, and that it was an act of liberality likely to conduce to the benefit of the company, the court refused to restrain the company from carrying the resolution into effect. *Taunton* v. *Royal Insurance Co.*, 33 L. J., Ch. 406; 2 H. & M. 135.

A majority of shareholders in a glass manufacturing company sanctioned the purchase of a patent for the manufacture of glass. *Gleadow* v. *Hull Glass Co.*, 19 L. J., Ch. 44.

Matters beyond the ordinary business.

The directors of a company formed to carry on the businesses of hop and beer merchants, maltsters and brewers, took on lease, for the purpose of offices, premises much too large for that purpose, to use part and underlet the rest. In a report adopted at the annual meeting of the company, it was stated they had "secured on advantageous terms the lease of No. 18, Billiter Street, suitable to the growing business and importance of the company." In the winding-up of the company, a claim for future rent was unsuccessfully resisted. There was a general power to make or take leases, &c. *Re London and Colonial Co., e.p. Horsey*, L. R., 5 Eq. 562; 37 L. J., Ch. 393. A porcelain company, which had been worked at a loss, let the whole of their works for a period of twenty-one years. *Featherstonehaugh* v. *Lee Moor Porcelain Co.*, L. R., 1 Eq. 318; 35 L. J., Ch. 84.

Leases.

Debentures.

A meeting of shareholders resolved to borrow money on debentures. The debentures issued in accordance with the resolution were valid. *Bryon* v. *Metropolitan Saloon Omnibus Co.*, 3 De G. & J. 123; 27 L. J., Ch. 685.

Buying their own shares.

A majority of shareholders cannot on behalf of the company authorize a purchase of its shares. *Vale of Neath Brewery Co., Morgan's Case*, 1 M. & G. 225; *Ibid., Lawe's Case*, 1 D. M. & G. 421; *Gregory* v. *Patchett*, 33 Beav. 595; 13 W. R. 34; *Hodgkinson* v. *National Live Stock Insurance Co.*, 4 De G. & J. 422; 28 L. J., Ch. 676. In *The Ulster R. Co.* v. *Banbridge R. Co.*, I. R., 2 Eq. 190, it was doubted whether the company could hold its own shares in the names of trustees.

By the rules of a foreign railway company it was provided that

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the general meeting convened by notice should represent the whole body of shareholders, and should take cognizance of the accounts and balances, and that their approval of the balances should completely discharge the board of directors. Two of the English directors retired in consequence of the small amount paid up. Afterwards, by the sanction of the solicitor appointed by the committee of management, they returned to several English subscribers the amount of their deposits without interest, and bought up the shares of others: Held, that the general meeting had power to sanction their proceedings. *Kent* v. *Jackson*, 14 Beav. 367; 2 D. M. & G. 49; 21 L. J., Ch. 438.

Forfeiture of shares.

Directors, with the sanction of a general meeting, declared all shares held by persons who had not signed the deed of settlement to be forfeited. An allottee of shares who had not signed the deed of settlement was on the winding-up of the company placed on the list of contributories. *National Steam Fuel Co., e.p. Barton*, 4 De G. & J. 46; 28 L. J., Ch. 637.

Somewhat analogously a bye-law excluding a member of a company of oyster fishers from profit till he paid a penalty imposed for joining a fishery on any other ground, was held invalid. The reasons given by Lord Ellenborough and J. Le Blanc was that there was a penalty on a penalty; but J. Bayley said, "The effect of this bye-law would be to mulct the party to the whole extent of his profits, however great they might be, supposing he had not the means of paying 10*l*." *Adley* v. *Reeves*, 2 M. & S. 53.

Alteration of capital.

A company passed a resolution to reduce its capital by altering the shares from 100*l*. shares to be 50*l*. shares: it was held that the resolution was inoperative. *Smith* v. *Goldsworthy*, 4 Q. B. 430.

Alteration in kinds of shares.

When about half the shares only of a company had been allotted, a resolution was passed authorizing the directors to issue the remaining shares if they thought fit with a preferential dividend. The company was restrained from so doing at the suit of a single shareholder. *Hutton* v. *Scarborough Cliff Hotel Co.*, 34 L. J., Ch. 463; *Hutton* v. *Berry*, 6 N. R. 376.

Dividends and calls.

An unlimited company may return part of the capital to its members; *Binney* v. *Ince Hall Coal Co.*, 33 L. J., Ch. 367; but it is thought that a limited company may not. A railway company was restrained from so doing (the charging of office expenses to capital being considered a payment of dividends out of capital). *Bloxam* v. *Metropolitan R. Co.*, 3 Ch. 337.

A railway company was not allowed to issue new shares to the old shareholders by way of dividends, on the ground that it worked inequality among the shareholders. *Hoole* v. *Great Western R. Co.*, L. R., 3 Ch. 262.

There is nothing to prevent a public company paying dividends before all their capital is subscribed, or all their works finished. *Browne* v. *Monmouthshire R. Co.*, 13 Beav. 32; 20 L. J., Ch. 497.

An unanimous meeting cannot bind absent shareholders in making calls payable on some shares only. *Preston* v. *Grand Collery Dock Co.*, 11 Sim. 327.

Purchasing businesses.

There is some doubt as to whether a majority of shareholders can sanction the purchase of the business or goodwill of a person carrying on the same sort of business as the company, or take on itself the liabilities in respect of such business. L. J. Turner seemed

to think that a company with the sanction of a general meeting might do so. *Re Saxon Life Insurance Society, e.p. Era Assurance Co.*, 32 L. J., Ch. 210. In the same case, V. C. Wood held that a power giving absolute discretion to the directors in the direction of the company did not enable them to do so (30 L. J., Ch. 137). "It certainly cannot be said to be within the ordinary scope of a company to purchase the goodwill of another company." *Per* Lord Cranworth, *Ernest* v. *Nichols*, 6 H. L. 401. So also *Re Saxon Life Assurance Society, e.p. Anchor Assurance Co.*, 32 L. J., Ch. 206. It is, however, thought that the purchaser of a business may assist, or even in some cases be necessary to the proper carrying out the objects of a company, and that such a transaction would be upheld.

Sale of business.

A company cannot sell its business (*a*), unless there is express power. *Clinch* v. *Financial Corp.*, L. R., 5 Eq. 482; 4 Ch. 117; 37 L. J., Ch. 281; 38 L. J., Ch. 1.

Where a shipowning company had sold all its ships to two of its principal members, the transaction was void. The Master of the Rolls said, "I think on the evidence before me that the transaction complained of was practically putting an end to the company." *Gregory* v. *Patchett*, 33 Beav. 597.

Hence it follows that without express power in both companies two companies cannot amalgamate. And it is difficult to see how an amalgamation can be practically carried out without the winding-up of the affairs of the companies, even when there is an express power to "amalgamate," unless the mode of doing so be specifically provided for. See *ante*, p. 35, *post*, C. A. 1862, s. 161.

On the meaning of the word amalgamate, V. C. Wood said, "I should rather assume an amalgamation to be where both companies agree to abandon their regulations and articles of association, and to register themselves under new articles as one body." *Bank of Hindustan, China and Japan, e.p. Higgs*, 2 H. & M. 666.

Statutory powers of companies governed by the Act of 1862.

(2) Companies governed by the Act of 1862 can alter their name (C. A. 1862, s. 13), their regulations (C. A. 1862, s. 50), the amount of their capital, and divide or consolidate their shares (C. A. 1862, s. 12; C. A. 1867, ss. 9—19); appoint inspectors, with extensive powers, to examine into the affairs of the company, (C. A. 1862, s. 60); refer disputes to arbitration under "The Railway Companies Arbitration Act, 1859" (C. A. 1862, s. 72), and wind up the affairs of the company (C. A. 1862, ss. 79 (1), 129, 147). All these matters require the formality of a special resolution (as to which see C. A. 1862, s. 51), except matters done under C. A. 1862, ss. 12, 72: and the voluntary winding-up, under certain circumstances (C. A. 1862, s. 129 (1) (3)), may be carried out without the formality of a special resolution.

The Stannaries Act, 1869.

Cost-book mining companies also have power by means of a special resolution (32 & 33 Vict. c. 19, s. 6), to alter their regulations (s. 7), and to sell their property (s. 24).

Mode of exercising powers.

18. The directors of a company are not individually its agents (1). The powers of directors and majorities of share-

(*a*) This, however, can be done indirectly by means of a winding up, and s. 161 of "The Companies Act, 1862."

Par. 18. holders of a company are exercised by passing resolutions at meetings of the board of directors, or general meeting of shareholders, as the case may be. The mode of summoning such meetings, the persons in whom the power of summoning them is vested, and the mode of ascertaining the opinion of such meetings, are matters of internal regulation settled by the articles of association of each particular company (2). Resolutions to enter into a contract are revocable until communicated to the other parties to such contracts (3). Corporations ordinarily contract by deed, but it is not now necessary that companies governed by the Act of 1862 should, except in cases where an ordinary individual must do so (4).

Directors are only agents as a body.

(1) The authority of a director and instructions from the solicitor of a company are not proof of the authority of the company being given to an auctioneer to sell land. *Moody* v. *London, Brighton and South Coast R. Co.*, 31 L. J., Q. B. 54.

Misrepresentation by a single director is not the misrepresentation of the company. *Re Universal Provident Life Assurance Co., Holt's Case*, 22 Beav. 48.

Two directors appeared by counsel to consent to a petition to wind up the company. Service on the company was not therefore dispensed with. *Re Tring, &c. R. Co.*, 4 De G. & Sm. 10.

The prescribed quorum of directors in the defendant's company being three, the secretary affixed the seal of the company to a bond, after having obtained the written authority of two directors at a private interview, and at another private interview the verbal promise of a third to sign the authority. It was held, that the company was not liable on the bond. *D'Arcy* v. *Tamar R. Co.*, L. R., 2 Ex. 158; 36 L. J., Ex. 37.

The knowledge by a director of the fact that bills endorsed for value to his company were accommodation bills, he not having been concerned in the transaction, was not imputed to the company. *Peruvian Railways Co.* v. *Thames and Mersey Marine Insurance Co.*, L. R., 2 Ch. 617; 36 L. J., Ch. 864.

But where the directors of two railway companies were nearly the same, in dealings between the two companies this fact was made a strong point of in imputing notice to one company that the other was not empowered to lend money. *Ernest* v. *Croysdale*, 2 D. F. & J. 175; 29 L. J., Ch. 580.

Compare *Contract Corp., e.p. Ebbw Vale Co.*, L. R., 8 Eq. 14, *post*, p. 77.

It appears, however, that some acts sanctioned by all the subscribers to the memorandum of association as the first directors of a company, will bind the company, though they do not meet for the purpose. With respect to the appointment of directors by them, V. C. Wood said, "I very much doubt whether it is necessary that those persons should meet together. If any one of the subscribers to the contract raises a question, he may be entitled to say, 'I will

not have this decided without a meeting of all;' but if they all concur, as in this case, it seems to me hypercritical to say the appointment was irregular." *Hallows* v. *Fernie*, L. R., 3 Eq. 537; 36 L. L., Ch. 273.

Semble, where seven out of ten directors were incapacitated, as being interested, from voting on a matter, the other three could meet for the purpose of conducting that business without giving them notice. *Exeter and Crediton R. Co.* v. *Buller*, 16 L. J., Ch. 449; 5 R. C. 211.

The fact that the proper number of directors was not complete did not vitiate a call. *Thames Haven Dock Co.* v. *Rose*, 2 M. & G. 552.

Where the articles of association do not prescribe a quorum, the number who usually act in conducting the business of the company is a properly constituted quorum. *Re Tavistock Ironworks Co., Lyster's Case*, L. R., 4 Eq. 233; 36 L. J., Ch. 616.

Where there were to be five directors, of whom three were to form a quorum, but the subscribers of the memorandum, of whom there were seven, were to be directors until others were appointed, three of the latter did not form a quorum. *Howbeach Coal Co.* v. *Teague*, 29 L. J., Ex. 137.

Where five of the directors formed a quorum, two could not waive a forfeiture of shares. *Card* v. *Carr*, 1 C. B., N. S. 197; 26 L. J., C. P. 113.

Where a provisional committee had appointed eight specified persons to be a managing committee, there being no evidence of usage that a number less the whole usually acted, a member of the provisional committee was not bound by only six of the eight. *Brown* v. *Andrews*, 18 L. J., Q. B. 153.

(2) In default of any regulations, some of these matters are provided for by C. A. 1862, s. 52. Meetings.

Special resolutions under the Act of 1862 require to be passed by a majority of three-fourths of the members, and to be confirmed at a subsequent meeting.

Meetings of cost-book mining companies are regulated by the Stannaries Act, 1869 (32 & 33 Vict. c. 19, ss. 4, 5, 6 and 8).

Objects which are to be carried out at different kinds of meetings can be carried out at the same meeting, if the requisites for each meeting is complied with. *Cutbill* v. *Kingdom*, 1 Ex. 494; *Graham* v. *Van Dieman's Land Company*, 1 H. & N. 541; 11 Ex. 101.

Calls might be made at the usual weekly meeting of directors. A special meeting was called for the same day as the weekly meeting was held. A call was made, and minutes entered as having been made under special resolution, which would have been void, as notice of that particular business had not been given. The call was good. *Wills* v. *Murray*, 19 L. J., Ex. 209; 2 Ex. 843.

As to proxies, see C. A. 1862, s. 51.

As to evidence of proceedings at meetings, see C. A. 1862, s. 67.

(3) Thirteen days before an order was made to wind up a bank, the directors passed a resolution increasing the rate of interest they allowed on deposits, "that the present rate to be allowed by this bank on deposits remaining three months, be," &c. There was no evidence to show that this was communicated to the depositors, they Undivulged resolutions are revocable.

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were therefore held only entitled in the winding-up to the smaller rate of interest. *East of England Banking Co.*, 38 L. J., Ch. 121; 2 Ch. 14.

On this principle a resolution does not require an agreement stamp before it can be put in evidence. *Mills* v. *British Provident Assurance Society*, 1 F. & F. 607.

Most of the cases illustrating this principle have arisen on contracts to take shares. *Ante*, Ch. II., *passim*.

What contracts must be under seal.

(4) This is by virtue of C. A. 1867, s. 37. There was a similar provision under the Act of 1856, s. 41, and though the act was generally repealed companies registered under it never lost the powers of contracting otherwise than by deed. *Prince* v. *Prince*, L. R., 1 Eq. 490; 35 L. J., Ch. 240.

Other corporations must contract under seal, except that trading corporations can make contracts not under seal which are directly connected with the purposes for which it was incorporated.

The exception is modern. Bovill, C. J., explains its growth and extent as follows:—"Originally all contracts by corporations were required to be under seal. From time to time certain exceptions were introduced, but these for a long time had reference only to matters of trifling importance and frequent occurrence, such as the hiring of servants and the like. But in progress of time a new description of corporations came into existence, the courts came to consider whether these exceptions ought not to be extended." "These exceptions apply to all contracts by trading corporations entered into for the purposes for which they were incorporated" *South of Ireland Colliery Co.* v. *Waddle*, L. R., 3 C. P. 463; 37 L. J., C. P. 211. Montague Smith, J., to the same effect said, "The general rule, no doubt, is, that a corporation contracts under seal; but from very early times exceptions have been allowed in the case of municipal and ecclesiastical corporations to enable them, without the formality of a seal, to transact matters of minor importance and daily occurrence. In the case of trading corporations these exceptions have step by step been extended, and have now grown larger than the rule. The modern doctrine, as I understand it, is, that a company which is established for the purpose of trading may make all such contracts as are of ordinary occurrence in that trade without the formality of a seal, and that the seal is required only in matters of unusual and extraordinary character which are not likely to arise in the ordinary way of business." *Ib.* Wightman, J., said also, "The result of the cases seems to me to be, that whenever the contract is made with relation to the purposes of the incorporation, it may, if the corporation be a trading one, be enforced though not under seal." *Dunstan* v. *Imperial Gas Light Co.*, 3 B. & Ad. 125.

In the following cases incorporated companies have been successfully sued at law on contracts not under seal:—upon bills of exchange, *Edie* v. *East India Co.*, 2 Burr. 1216; *Murray* v. *East India Co.*, 5 B. & A. 204: upon a contract for navigating ships, *Anderson* v. *Australian Royal Mail Steam Navigation Co.*, 5 E. & B. 409; 24 L. J., Q. B. 322: upon a contract for the supply of gas meters, *Beverley* v. *Lincoln Gas Co.*, 6 Ad. & El. 829. Other corporations:—for the supply and putting up of water-closets, *Clarke* v. *Uckfield Union*,

21 L. J., Q. B. 349: for putting up iron gates, *Sanders* v. *St. Neot's Union*, 8 Q. B. 810: for coals, *Nicholson* v. *Bradfield Union*, 35 L. J., Q. B. 176; L. R., 1 Q. B. 620: for work done as an accountant, *King* v. *North Bierley Union*, 28 L. J., Q. B. 62; E. B. & E. 873. Damages for non-fulfilment of a contract to take rails by a company whose business it was to construct railroads, were proved for in the winding-up of the company. *Contract Corp., e.p. Ebbw Vale Co.*, L. R., 8 Eq. 14.

In the following cases corporations have sued successfully at law on contracts not under seal:—for the non-performance of an agreement to take gas, *Church* v. *Imperial Gas Co.*, 6 A. & E. 846: for the price of gas consumed, *City of London Gaslight and Coke Co.* v. *Nicholls*, 2 C. & P. 365: for damages on account of the bad quality of goods supplied, *Australian Royal Mail Steam Navigation Co.* v. *Marzetti*, 11 Ex. R. 288.

An appointment of an attorney under a power given to the directors of a railway company by act of parliament, not under seal, was valid. *Reg.* v. *Cumberland*, 5 R. C. 332; 17 L. J., Q. B. 102.

The court refused to set aside an order for reference to arbitration which had been obtained by the attornies of a company not appointed under seal. *Faviell* v. *Eastern Counties R. Co.*, 17 L. J., Ex. 223; 2 Ex. 344.

In the following cases corporations have been held not liable:—for work done by collector of rates, *Smart* v. *Westham Union*, 10 Ex. 867; for cleaning out a dock, *London Dock Co.* v. *Pinnott*, 26 L. J., Q. B. 129; 8 E. & B. 347.

Contracts, though not under seal, will be specifically enforced against corporations if part performed, *post*, par. 19 (5).

Formalities.

19. Some formalities are directory (*a*) or discretionary (1). Where formalities cannot be strictly complied with, they may be complied with as near as possible (2). Where a person dealing with a company cannot from his position tell whether formalities have been observed, the company cannot take advantage of the neglect of such formalities (3). And where the directors have intended to do something in their power, the Court of Chancery has given effect to such intention, notwithstanding a mistake in the attempt to effect it (4). Where a person has acted upon a contract with knowledge of the non-observance of a formality,

(*a*) Directory formalities as opposed to discretionary on the one hand, and imperative on the other, are formalities that, though the non-observance of them does not affect the validity of any act, it is the duty of the executive to observe them, and they can be compelled to perform them, or are liable to penalties or in damages for the non-observance of them. See the remarks of Lord Wensleydale in *Ernest* v. *Nichols*, 6 H. L. 401; and of V. C. Wood in *Fountain* v. *Carmarthen R. Co.*, L. R., 5 Eq. 311; 37 L. J., Ch. 429; but no case can be cited in which directors have been made liable.

Par. 19. he is precluded from taking advantage of the non-observance (5). And it will generally be presumed that formalities have been observed till the contrary is shown (6).

Principles.

(1) The reason of some of these decisions seems to be, that the formality prescribed is merely for the purpose of evidence of some act, and that if that can be proved otherwise, the want of the formality is immaterial. Thus, where it was provided that the consent of directors should be indorsed on transfers of shares, it was held, that a transfer of shares was good, the consent being otherwise proved. *Re Royal British Bank, Nichol's Case*, 3 De G. & J. 387; 28 L. J., Ch. 257. So where consent ought to have been testified by the signature of directors on the margin of a transfer of shares. *Re North of England Banking Co., Re Straffon's Exors.*, 22 L. J., Ch. 194; 1 D. M. & G. 576.

In one case, certain formalities provided by the deed of settlement of a company having been systematically disregarded, it was held, that there must be taken to have been a universal consent to disregard these provisions, and that the transferee in a transfer of shares in which they had not been observed was not thereby prevented from becoming a member of the company. *Vale of Neath Brewery Co., Walter's Case*, 3 De G. & S. 119. Where the giving seven days' notice of transfer had been waived by general consent, the consent of the court of directors was not also waived. *Re Royal British Bank, e.p. Walton*, 26 L. J., Ch. 545.

In *Re Worcester Corn Exchange*, 15 Jur. 960, the advertisement of part of the preliminary proceedings was dispensed with, sect. 15 of the Winding-up Act, 1848, having been substantially complied with.

Cases where formalities have been held directory.

Formalities have been found to be directory also in the following cases:—where cheques ought to have been signed by three directors, *Re Norwich Yarn Co., e.p. Bignold*, 22 Beav. 143; 25 L. J., Ch. 601: where there was a provision that the secretary should countersign promissory notes, *Aggs* v. *Nicholson*, 2 H. & N. 165; 25 L. J., Ex. 348.

Where notice given preliminary to forfeiture demanded immediate payment, instead of payment within twenty-one days, forfeiture founded on that notice was good against the company, the shareholder having acquiesced. *Re Home Counties Life Assurance Co., Wollaston's Case*, 4 De G. & J. 437; 28 L. J., Ch. 721.

Semble, a rule requiring the sanction of a general meeting to the dismissal of an agent is directory. *Mair* v. *Himalaya Tea Co.*, L. R., 1 Eq. 411.

Where a company repudiated their liability on a bill accepted without a formal resolution, L. J. Giffard said, "I have no hesitation in saying, that if the directors met together and knew that the chairman had accepted a bill of exchange, that would bind the company." *Land Credit Co. of Ireland, e.p. Overend, Gurney & Co.*, 17 W. R. 693.

Compare *Kollmann's Locomotive Co., e.p. Beresford*, 2 M. & G. 197; 19 L. J., Ch. 332.

A mistake in the name of a shareholder on a memorial did not prevent a creditor moving for a writ of *sci. fa.* against a shareholder. *Clowes* v. *Brettel*, 11 M. & W. 461.

A shareholder registered by a wrong christian name in a company registered under the Act of 1844, will be made a contributory. *Merchant Traders' Co., e.p. Yelland*, 5 De G. & Sm. 395.

However, where an infant was registered as Henry Calverly, his name being Henry Calverly Torrens, it was held, that a motion to rectify the register was not necessary, as he was not a member. *Russian Vyksounsky Ironworks, e.p. Calverly Torrens*, 15 W. R. 247.

The omission of the address of a shareholder on register was immaterial. *Wills* v. *Murray*, 19 L. J., Ex. 209; 4 Ex. 843.

Provisions as to mode of making memorial of shareholders under 7 & 8 Vict. c. 113, ss. 16, 17, were held directory, and a shareholder whose name was on the memorial was held liable, notwithstanding informalities. *Daniell* v. *Royal British Bank*, 1 H. & N. 681.

That shares were not distinguished, and title of the register book was wrong, did not matter. *Bain* v. *Whitehaven R. Co.*, 3 H. L. 1. An informality in the heading of the memorial of shareholders was immaterial. *Dossett* v. *Harding*, 1 C. B., N. S. 524; 26 L. J., C. P. 107.

Where imperative.

In the following cases informalities have vitiated the acts of companies against the corporation:—

Nine days' notice, instead of ten, invalidated a forfeiture. *Watson* v. *Eales*, 23 Beav. 394; 26 L. J., Ch. 361.

Where the articles of association required mortgages to be sealed, to be signed by two directors, and countersigned by the secretary or actuary, a deposit of title deeds, accompanied by memorandum, was not an equitable mortgage. *General Provident Insurance Company*, 17 W. R. 514.

Where a month's notice to directors was requisite in notice by proprietors to call a meeting. V. C. Wigram, "I admit that the month required would probably be considered imperative." *Foss* v. *Harbottle*, 2 Hare, 495.

Where a company were bound to keep a register of shareholders under seal, the register could not be put in evidence in an action for a call made before the seal was affixed that the defendant was a shareholder at the time the call was made. *Cheltenham R. Co.* v. *Price*, 9 C. & P. 55. A rough memorandum, though sealed, is not a register. *Wolverhampton Waterworks Company* v. *Hawksford*, 6 C. B., N. S. 336.

An attorney to a municipal corporation not appointed under seal cannot sue for his costs. *Arnold* v. *Mayor of Poole*, 4 M. & G. 860.

The discharge of directors at a meeting which had not been properly advertised was invalid. *Swansea Dock Company* v. *Levier*, 20 L. J., Ex. 447.

A call made at a meeting not duly summoned was bad. *Moore* v. *Hammond*, 6 B. & C. 456.

Where to an action for calls a forfeiture was pleaded, it was held necessary to state that the shares had been forfeited at a general meeting, a general meeting only having power to forfeit. *Edinburgh R. Co.* v. *Hibblewhite*, 6 M. & W. 707; *London and Birmingham R. Co.* v. *Fairlough*, 2 M. & G. 674.

See also *Cameron's Coulbrook Company, e.p. Green*, 24 L. J., Ch. 331.

As to what provisions in acts of parliament are directory, see Shelford on Railways, 4th edit., Vol. II., p. 13.

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(2) Where it was provided that a number of proprietors might call a meeting by means of a notice to the board of directors, to be left with the clerk or secretary at the principal office of the company, there being no clerk or secretary or principal office, it was thought that though these formalities could not be complied with, a meeting otherwise duly called was validly held. *Foss* v. *Harbottle*, 2 Hare, 461.

Where the seals could not be got at, that the appointment of an attorney to sue was not under seal was not a reason for taking the bill off the file. *Exeter and Crediton R. Co.* v. *Buller*, 5 R. C. 211; 16 L. J., Ch. 449.

For course pursued when it was impossible to comply with rules 6 and 9 of the General Orders under the Companies Act, 1867, see *In re General Bank for Promotion of Agriculture and Public Works*, 17 W. R. 304.

Person unable to see to the observance not affected by non-observance.

(3) Upon this C. J. Jervis said, "The plaintiff seeing that power given to the directors appointed by the company would have a right to infer as against the company that the meeting had been held and this authority duly given." *Royal British Bank* v. *Turquand*, 26 El. & Bl. 327.

Where the company was held bound, though a resolution necessary to enable the directors to borrow had not been passed, Wood, V. C., laid down the rule, that a party contracting with a company, when he found that acts done by the directors were within the scope of their powers, had a right to assume their compliance with the internal arrangements of the company. *Athenæum Life Insurance Co., e.p. Eagle Insurance Co.*, 4 K. & J. 547; 27 L. J., Ch. 829.

It was assumed in favour of a debenture holder that a resolution recited to have been passed by a meeting of shareholders had been duly made. *Agar* v. *The Athenæum Life Insurance Society*, 3 C. B., N. S. 725; 27 L. J., C. P. 95.

In *Clarke* v. *Imperial Gas Co.*, 4 B. & Ad. 315, it was held, that, in absence of strict proof that formalities in calling a meeting had been complied with, a company was bound in a contract founded on a resolution passed at that meeting.

Where a consent to a transfer of shares was signed by directors separately, instead of at a board meeting, the transfer was held valid as against the company. *Bargate* v. *Shortridge*, 5 H. L. 297; 24 L. J., Ch. 457.

Sect. 39 of the Companies Clauses Act, 1845, by which a reborrowing was to be sanctioned by a general meeting, was held to be directory. *Fountain* v. *Carmarthen and Cardigan R. Co.*, L R., 5 Eq. 316; 37 L. J., Ch. 429, where Wood, V. C., said, "If the directors have power and authority to bind the company, but certain preliminaries are required to be gone through on the part of the company before that power can be duly exercised, then the person contracting with the directors is not bound to see that all these preliminaries have been observed. He is entitled to presume that the directors are acting lawfully in what they do."

See also the judgment of L. J. Selwyn, *Land Credit Co. of Ireland, e.p. Overend, Gurney & Co.*, 17 W. R. 689; L. R., 4 Ch. 460.

A rule that the seal of a company was not to be affixed to any policies except by the order of three of the directors, signed by

them, and countersigned by the manager, was held to be directory. *Prince of Wales Insurance Co.* v. *Harding*, 19 E. B. & E. 183; 27 L. J., Q. B. 297.

Where directors had power to appoint a manager and to delegate certain powers to him, and there was no express delegation of power to him, the company was liable for goods supplied on his order. *Smith* v. *Hull Plate Glass Co.*, 11 C. B. 897.

A benefit building society was held liable upon orders given by the secretary, though not sanctioned by the number of trustees required by the rules for transacting the ordinary business of the society, or entered in the minute-book. *Collard* v. *Bourne*, 15 C. B., N. S. 468.

Where two directors acted on the part of a company in appointing a foreman, it was presumed that they were either properly constituted a quorum of directors, or proper powers for that purpose had been delegated to them, the directors having power to fix the number of a quorum, and also to delegate powers to any number of themselves. *Totterdell* v. *Fareham Brick Co.*, L. R., 1 C. P. 674; 35 L. J., C. P. 278.

If directors were to employ an agent at an improper salary the company would be liable, and the directors liable to recoup the company. Thus where the salary of the secretary ought to have been fixed by a general meeting, and was not, he successfully sued for work done at the rate agreed on by the directors. *Bell* v. *Darenth Valley R. Co.*, 1 H. & N. 305.

Of course this rule will not enable the directors to do exceptional acts which, under the circumstances, might be done on the authority of a majority of shareholders without such authority; *ante*, 71.

Persons able to see to such observance.

As directors and others, who from their position can tell whether formalities are duly observed, presumption of such observance will not be made in their favour. Thus a minute of a general meeting, showing that a financial statement of the affairs of the company was submitted to the meeting, is not sufficient evidence to induce the court to presume the assent of the meeting to a deed otherwise under the Companies Act, 1844, s. 29. *British Provident Assurance Co.* v. *Norton*, 3 N. R. 147; 9 Jur., N. S. 1308. On this principle a director who had transferred shares to a person who already held as many shares in the company as he was allowed to by the deed of settlement, was held a contributory. *Newcastle Marine Insurance Co., e.p. Brown*, 19 Beav. 97. So an auditor who had transferred shares without seeing all formalities duly observed was held a contributory. *Newcastle Marine Insurance Co., e.p. Henderson*, 19 Beav. 107. This case is not of much value as a precedent, as the court doubted the *bona fides* of the transaction.

(4) Where the directors of a company had power to borrow on debentures, notwithstanding informalities, the holders of debentures were allowed a charge on the property of the company in its winding-up. *Re Strand Music Hall Co.*, 3 D. J. & S. 147.

Part performance.

(5) A part performed contract for the sale of lands, which ought to have been under seal, was specifically enforced against an incorporated company. *London and Birmingham R. Co.* v. *Winter*, 1 Cr. & Ph. 57. A contract to grant a lease not under seal was

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specifically enforced against a corporation. *Maxwell* v. *Dulwich College*, 7 Sim. 222.

A company was injoined from stopping up a means of communication through a tunnel constructed at the plaintiff's expense under an agreement not under seal. *Laird* v. *Birkenhead R. Co.*, 29 L. J., Ch. 218; John. 500.

Where a contract for the sale of one company's business to another had been acted upon, it was held unnecessary to determine whether the selling company had executed the purchase deeds. *Re Sea, Fire and Life Assurance Co., e.p. Port of London, &c. Assurance Co.*, 5 D. M. & G. 465; 21 L. J., Ch. 507. This case was reversed in the House of Lords on grounds not affecting this matter.

Where the rules of a cost-book mining company required seven days' notice of an intended transfer, but the transfer was acted on by the transferee and the company, the transferee was made a contributory. *Re Pennant, &c. Lead Mining Co., Mayhew's Case*, 5 D. M. & G. 837.

It was held in an action for calls that where a person, party to an informality in the formation of a company, had acted as shareholder, he had held himself out as proprietor and could not dispute his liability. *Cromford and High Peak R. Co.* v. *Lacey*, 3 Y. & J. 80.

The want of execution of a deed cannot be supplied, so as to make a call a specialty debt. *Hay* v. *Willoughby*, 10 Hare, 244.

Compare paragraphs, 21, 22.

Omnia præsumuntur rite esse acta.

(6) Upon the application of this principle against a company, L. C. Westbury said, "If a company has power to do a thing, and if there is only requisite a particular formality, such as the consent of a general meeting, in order to warrant the exercise of that power, and if I find a company dealing with an individual at arm's length and taking a transfer of shares, duly completing that transfer and entering the transaction in books, so that I am warranted and justified in imputing a knowledge of it to every shareholder, I am fully borne out not only by the reason of the thing, but by the express authority of the case I have referred to, in inferring as against the company that the formality, which alone is wanting to the exercise of the power, has been either antecedently supplied or subsequently added to the transaction." *British Provident Life and Fire Assurance Society, e.p. Grady*, 32 L. J., Ch. 326; 1 D. J. & S. 488. This case did not require the application of this rule, as the shares were transferred to a trustee for the company, the transferor being ignorant of the existence of the trust.

See also similar remarks by the same judge. *British Provident Life and Fire Assurance Society, e.p. Lane*, 33 L. J., Ch. 84.

Where it was presumed as against the company that the consent of a general meeting had been obtained to a transfer of shares to the company, Lord Westbury also put it on the ground "That what it was right and proper to do at that meeting must be taken to have been done, unless there be evidence to the contrary." It is somewhat difficult in these cases to separate the principle of the company's being bound by acquiescence from the presumption of the formality having been observed; but the safest ground for resting the latter decision on seems to be that, it being proved that the matter

was before a meeting, the absence of any notice of such matter was not sufficient evidence to rebut the presumption. The proper formality had been observed, it being the duty of the company to keep proper minutes.

Where entries were made in the books of a company by the secretary that a forfeiture of shares had been made, it was presumed that a resolution necessary to make the forfeiture valid had been passed. *North Hallenbeagle Mining Co., Knight's Case*, L. R., 2 Ch. 321; 36 L. J., Ch. 317. See also under Companies Clauses Consolidation Act, 1845, *Lowe* v. *London and North Western R. Co.*, 18 Q. B. 632; 21 L. J., Q. B. 364.

The officer who had legal custody of the seal of a company was presumed to have been properly appointed agent of the company. *Hill* v. *Manchester Waterworks*, 5 B. & Ad 866.

The register of shareholders under s. 9 of the Companies Clauses Act, 1845, was admitted as evidence without proof of the seal having been affixed at an ordinary meeting in compliance with that section. *North Western R. Co.* v. *M'Michael*, 5 Ex. 855; 20 L. J., Ex. 5.

An allegation in a bill that a company has carried on its affairs in conformity with certain rules and regulations, amounted to an assertion that a meeting which had sanctioned the matters complained of had been duly held. *Kent* v. *Jackson*, 14 Beav. 382, *per* Sir J. Romilly, M. R.

In an action for calls, the cause having been set down for trial and made a *remanet*, the defendant applied to set aside the proceedings on the ground that the company was virtually extinct, and the parties who had instituted the action had no authority to do so: Held, that as they had been for some time acting as directors, the court would not upon summary application inquire into the validity of their appointment; that the attorney by whom they sued had been properly appointed was also assumed. *Thames Haven Dock and R. Co.* v. *Hall*, 5 M. & Gr. 274.

The principle is recognized in the principal act, C. A. 1862, s. 67.

Matters partly *ultra vires* (*a*).

20. Where transactions are attempted to be done on behalf of a company which involve matters partly within and partly beyond the powers of the company, if the matters *ultra vires* are subsidiary or distinct, the transactions are good except as to the parts *ultra vires* (1), but if the matters *ultra vires* form a principal part of such transactions, they are altogether void (2).

When void in part.

(1) Where directors had power to mortgage, but not to accept bills of exchange, they made a mortgage and accepted bills to the amount of their debt, though the proviso for redemption was made dependent

(*a*) Compare cases connected with fraudulent transfers, *post*. par. **34** (2).

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on payment of the bills of exchange, the mortgage was valid. *Scott* v. *Colburn*, 26 Beav. 276; 28 L. J., Ch. 635.

Where a debenture was issued partly in consideration of cash, partly in consideration for the delivering up of a void Lloyds' bond, it was valid to the extent of the cash advanced. *Fountain* v. *Carmarthen R. Co.*, L. R., 5 Eq. 316; 37 L. J., Ch. 429.

Semble, a mortgage of calls with a power of sale is not invalid, though the power of sale is invalid. *Pickering* v. *Ilfracombe R. Co.*, L. R., 3 C. P. 235; 37 L. J., C. P. 118.

Where a resolution was passed at a meeting of shareholders to authorize acts partly *ultra vires*, a shareholder was not bound to apply for an injunction to restrain the company from acting *ultra vires* until he became aware that an attempt was being made to carry out the illegal portion of the resolution. *Charlton* v. *Newcastle R. Co.*, 5 Jur., N. S. 1058.

The case of *Haddon* v. *Ayres*, 1 El. & El. 118; 28 L. J., Q. B. 105, illustrates this. There an arrangement was made between the directors that some of them should retire: they were to be relieved of their shares, and the remaining directors covenanted to indemnify them, though the first part of the arrangement could not be carried out. An action was successfully brought on the covenant.

An agreement under seal made between two railway companies was set aside so far as it was *ultra vires* at the instance of a shareholder, the operation of the rest being left to be adjusted by litigation or otherwise between the contracting parties. *Maunsell* v. *Midland Great Western (of Ireland) R. Co.*, 32 L. J., Ch. 513; 1 H. & M. 130.

Where altogether void.

(2) The directors of a company had power to issue promissory notes; the company attempted to take the business of another company, which they had no power to do; the directors gave a promissory note in payment of a debt of the other company. It was held even at law, that the person to whom the note had been given could not recover on it. *Balfour* v. *Ernest*, 28 L. J., C. P. 170; 5 C. B., N. S. 601.

An agreement to refer disputes relating to a contract *ultra vires*, is itself *ultra vires*. *Maunsell* v. *Midland Great Western (of Ireland) R. Co.*, 32 L. J., Ch. 513; 1 H. & M. 130.

Where a company by debenture pledged "the property belonging to us for the time being, during the subsistence of the debenture, with all the buildings and stock on and connected with our said property, and all the receipts and revenues to arise therefrom," it seems to have been thought that had the debenture on its construction included the capital of the company, which it did not, the debenture would have been void altogether. *Re Marine Mansions Co.*, L. R., 4 Eq. 601; 37 L. J., Ch. 113.

A railway company entered into an agreement to lease their line to another company. The agreement contained some provisions that were not *ultra vires*, and some that were, but an application was to be made to parliament for power to carry out such provisions as should be *ultra vires*. It was held that as the agreement provided for a number of things to be done, which were all for the purpose of accomplishing a certain object that was *ultra vires*, the parties had no right by virtue of that agreement, until they had obtained the

authority of parliament, to do even those acts which independently of the agreement they did not require the authority of parliament to do. *Hattersley* v. *Shelburne*, 31 L. J., Ch. 873.

An agreement was entered on between two companies for their amalgamation, to be carried out by the purchase of the business of one company by the other and the issue of shares to the shareholders of the selling company. As the agreement was never ratified by the purchasing company, it was void, but it was acted upon, and under it S. and W., two of the directors of the selling company, acted as directors of the amalgamated company, and their names were placed on the register of shareholders in respect of paid up shares, to which they would have been entitled under the agreement. On the winding-up of the amalgamated company, they were placed on the list of contributories in respect of these shares, which were not treated as paid-up shares by reason of the provisions of the Companies Act, 1867, s. 25, not having been complied with. Held, that as the amalgamation was altogether void, and the agreement to take shares was part of it, it was also void, and S. and W. were removed from the list of contributories. *London and Northern Assurance Corp., e.p. Stace and Worth*, 17 W. R. 751.

The improper use of powers.

21. Directors will be restrained from exercising their powers improperly (1); and contracts made between a company and a person who has notice that the directors are exercising their powers to effect an improper object, cannot be enforced against the company (2), and such persons are liable in equity for any loss the company may have incurred in respect of such dealings (3). Powers relating to the rights of shareholders among one another, can only be exercised *bonâ fide* for their proper purposes (4).

Injunctions to restrain abuse of powers.

(1) *Semble*, the accomplishment of an object *ultra vires* indirectly by means *inter vires* will be restrained. *Hattersley* v. *Shelburne*, 31 L. J., Ch. 873.

L. C. Cranworth enjoined a company from laying down rails on narrow gauge system, as being done in pursuance of an illegal agreement; *Beman* v. *Rufford*, 1 Sim., N. S. 550; he said, "although I think that if the company meet and resolve as an abstract proposition, that it will be for their interest to lay down a narrow gauge of lines, they may do so: yet I think they cannot do so in pursuance of the agreement they have made, because in my opinion that agreement is quite illegal." *Ib.* 568.

Directors had been empowered to issue shares. They were restrained from issuing shares when the reason for which the power was given was gone. *Fraser* v. *Whalley*, 2 H. & N. 10.

It is thought that the directors will not be allowed to trade until

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a substantial portion of the capital has been subscribed for, but that it is not necessary that the whole of the shares should be taken up before business is commenced. This is however a matter that must depend in great measure on the memorandum and articles of association of the particular company.

In *The Ornamental Wood Work Co.* v. *Brown*, 2 H. & C. 63; 32 L. J., Ex. 190, Bramwell, B., said, "I cannot help thinking for my own part, in the absence of any stipulation to the contrary, that the directors of a company have no right to trade until the original capital is subscribed for." See also the remarks of Martin, B., *Howbeach Coal Co.* v. *Teague*, 29 L. J., Ch. 137.

V. C. Malins considered it fraud to carry on business with little more than one-fifteenth of the stated capital. *Imperial Steam and Household Coal Co.*, 37 L. J., Ch. 517. See *Great Cambrian Mining Co., e.p. Hawkins*, 2 K. & J. 253; 25 L. J., Ch. 221.

The fact that all the capital of a company has not been subscribed is no bar to its commencing business. *Re London and Eastern Banking Corp., e.p. Longworth's Exors.*, 29 L. J., Ch. 55; John. 455.

Effect of abuse of powers.

(2) An arrangement by which a debenture held by a director was redeemed before it was due, and the amount of purchase-money set off against calls on the winding-up the company, was not allowed to stand. *Re Mason's Hall Tavern, Habershon's Case*, L. R., 5 Eq. 286.

Shares were fraudulently issued and a bill was filed to impeach the transaction. Held, that a *bonâ fide* purchaser of any of the shares before bill filed must retain the benefit of the transaction and rank with the other shareholders, but that purchasers after bill filed must show that their vendor was a *bonâ fide* holder before bill filed. *Barnard* v. *Bagshaw*, 1 H. & N. 69.

Where there was an open agreement appearing on the articles of association that the promoters should be paid 10,000*l.*, but on payment of half this sum by the directors, 2,000*l.* was returned to them under a secret agreement, this circumstance vitiated the agreement and a claim by the promoters for the unpaid 5,000*l.* was disallowed. *Re Madrid Bank, e.p. Williams*, L. R., 2 Eq. 216; 35 L. J., Ch. 474.

Where a company was projected for the purpose of working a colliery and patent which it was agreed were to be purchased from M., and there was a private arrangement under which M. was to give some of the shares which constituted the purchase-money to the directors and solicitor of the company. M. filed a bill against the company for specific performance of his agreement, but it was dismissed as the agreement was tainted with fraud. *Maxwell* v. *Port Tennant Fuel and Coal Co.*, 24 Beav. 495.

But *semble*, a person contracting for the supply of goods to a company of a class required for their ordinary business, though he may know they are to be used for matters beyond the power of the company, will not be precluded from enforcing his contract. *Re Contract Corp., e.p. Ebbw Vale Co.*, L. R., 8 Eq. 14.

Persons cannot repudiate contracts on the ground that the directors have not been acting fairly to their shareholders.

The holder of shares in trust for a secretary, to whom they had been given as a reward for services, was made a contributory. *Independent Assurance Co., e.p. Holt*, 1 Sim., N. S. 389.

Compare cases where shares have been issued altogether *ultra vires*, *post*, p. 91.

(3) Where shares taken as having 1*l.* paid up were issued to P. as payment for property sold to the company, and he gratuitously transferred some to the directors on the winding-up of the company, the shares were treated as having 1*l.* due on them, and in default of the directors being unable to pay, P. was ordered to contribute 1*l.* in respect of such shares. *Irish Consolidated Mining Co.*, *e.p. Perrier*, 7 Ir. Ch. Rep. 256.

Directors who had voted themselves paid up shares were put on the list of contributories in respect of shares on which nothing had been paid. *Imperial Silver Marine Co.*, 16 W. R. 1220.

Void forfeiture of shares.

(4) Where directors had a power to forfeit shares for nonpayment of calls and an arrangement was entered into perfectly open and without any fraud under which certain of the shareholders were to get rid of their shares by the exercise of this power, and though under the arrangement the company received a large sum of money with which they carried on their business for years: it was held that a forfeiture made in pursuance of the arrangement was void. *Spackman* v. *Evans*, L. R., 3 E. & Ir. 171; 37 L. J., Ch. 752. Lord Cranworth said, "It is plain that this is a power intended to be exercised only when the circumstances of the shareholder may make it expedient for the interests of the company, not a power to be exercised for the interest or supposed interest of the shareholder."

Where a director had taken shares in the company intending them to be for the benefit of the company; when he ceased to be a director he got the directors to forfeit them; the forfeiture was held *ultra vires*, there being a power to forfeit for nonpayment of calls. *Athenæum Life Assurance Society*, *Richmond's Case*, 20 K. & J. 305.

It was held that the discretion was a trust to be exercised for the benefit of all the shareholders. *Harris* v. *North Devon R. Co.*, 20 Beav. 384.

One of the directors took shares in order to enable his company to be registered, calls were made on his shares, and by a resolution of the directors they were declared forfeited and the forfeiture was bad, as the only legitimate purpose for which the power could be exercised was for the benefit of the company. *London and County Insurance Co.*, *Jones' Case*, 27 L. J., Ch. 666.

Shares were taken and registered in the joint names of a father and son; shortly after a call of 2*l.* was made, the father became a director, and having, as he said, discovered that the company was formed under circumstances of fraud, he resigned his seat, and applied to the directors to forfeit his shares. A resolution was passed that the shares were forfeited. On the winding-up of the company the forfeiture was held void. *London and Provincial Starch Co.*, *e.p. Gower*, L. R., 6 Eq. 77.

Compare *Blisset* v. *Daniel*, 10 Hare, 493, a case on the exercise of a power to expel a partner.

A power of forfeiture must be exercised for the purpose for which it was given. Where a subscription contract provided that there might be a forfeiture for non-execution of the deed of settlement, which deed recited that a call had been paid by the subscribers, and the directors required a subscriber to pay the call and execute the deed: it was

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held they could not forfeit for non-execution of the deed, as that would be in fact an exercise of the power for the nonpayment of calls. *Norton* v. *Mitchell*, 5 D. M. & G. 648. A forfeiture was set aside on the ground that in allowing the shareholder the price of shares they allowed him a little less than the market value, though if they had been sold they would probably have fetched less. *Stubbs* v. *Lister*, 1 Y. & C., C. C. 81.

But as between the shareholder and the company forfeiture is a purely legal question, see *post*, par. 36.

Liability of companies on contracts *ultra vires* from which they have benefited.

22. Companies which have derived benefits from dealings on their behalf beyond their powers, or on which they cannot be sued at law for some other reason, are liable in equity to recoup the persons from whom they have derived such benefits to the extent they have benefited (1).

Application of rule in favour of strangers.

(1) Where debentures had been issued in fraud on a company, it was held, in a suit to restrain the holder of the debentures from proceeding at law upon them, that he was entitled to an enquiry as to what the company had actually received on the debentures. *The Athenæum Life Insurance Co.* v. *Pooley*, 28 L. J., Ch. 119; 3 De G. & J. 294. Where there was a fund which had been set apart on trust for payment of the debts of a friendly society, a person who had lent money irregularly, but which had been applied for the benefit of a company, was held entitled to sue in equity for the administration of those trusts. *Pare* v. *Clegg*, 29 Beav. 589; 30 L. J., Ch. 742.

Premiums paid on a marine insurance policy granted by the directors of a life insurance company were allowed to be proved in the winding-up of the company. *Re Phœnix Life Assurance Co., Burge's Case*, 2 J. & H. 441. What the company had actually received on the fraudulent issue of debentures was allowed to be proved in the winding-up of the company by purchasers for value without notice of the fraud. *Re London and County Assurance Co., Wood's Claim*, 30 L. J., Ch. 578.

A railway company had exhausted its borrowing powers. L., on the security of bonds, advanced money which was applied in the completion of the railway. In the winding-up of the company L. was entitled to the proceeds of the sale of the railway in priority to preference shareholders. *Re Cork and Youghall R. Co., ex p. Overend, Gurney & Co.*, 17 W. R. 873.

In favour of directors and agents.

A director who had paid off a debt incurred for necessaries by a company that had no power to borrow, sued the company, which was being wound up voluntarily, and the liquidators obtained an injunction restraining them from paying dividends on preference shares in priority to his equitable debt. *Lowndes* v. *Garnett and Moseley Green Mining Co.*, 3 N. R. 601; 33 L. J., Ch. 418.

Where a company had borrowed money on mortgage to a director which was voidable, and part of the money had been repaid, in a suit to set aside the mortgage brought by the official liquidator the court refused to order the personal representatives of the director to refund the money. *Bristol Provident Society* v. *Norton*, 9 Jur., N. S. 1308; 3 N. R. 147.

Where directors and shareholders had advanced money to carry on the works of a mine, which would have gone to decay if not worked, in the winding up of the company the other shareholders were made to contribute to recoup the outlay. *German Mining Co., e.p. Chippendale*, 4 D. M. & G. 19; 22 L. J., Ch. 26.

A director was allowed to prove in a winding-up for so much of a loan advanced by him to the company on a debenture as he could show had been properly applied for the purpose of the company. *Re National Patent Steam Fuel Co., e.p. Baker*, 1 Dr. & Sm. 55.

Directors have also been allowed to prove for money applied for the purposes of the company in the following cases: *Re Norwich Yarn Co., e.p. Bignold*, 22 Beav. 143; 25 L. J., Ch. 601; *Re Electric Telegraph Co. of Ireland, Troup's Case*, 29 Beav. 353; *Hoare's Case*, 38 Beav. 225.

The borrowing powers of a railway company were exhausted; all the capital had not been subscribed; the directors advanced money which was applied for the purposes of the company. They were entitled to be repaid in priority to dividends on preference shares. *Ulster R. Co.* v. *Banbridge R. Co.*, I. R., 2 Eq. 190; 16 W. R. 598.

A company took leasehold premises from one of the directors under an agreement void, as under a void resolution; the company occupied the premises, and while in their occupation a forfeiture was committed by non-observance of the covenants. The lessor recovered possession in an action of ejectment. The lessee was allowed to prove in the winding-up for the use and occupation of the premises. *Burslem Paper Mills Co., e.p. Kay*, 16 W. R. 1103.

Where, however, directors of a company advanced money for the purpose of completing a corn exchange, for the building of which the company was formed, they were not recouped. *Re Worcester Corn Exchange Co., e.p. Heskew*, 3 D. M. & G. 181.

It has been supposed that where money is advanced by directors for the purpose of carrying on the business of the company, they are treated in a more favourable light than strangers would be, inasmuch as it is their duty to carry on the business. And certainly, in some of the cases, the remarks of the judges are in accordance with this view, particularly those of V. C. Kindersley in *Baker's Case*, where he said, speaking of such advances by directors, "Inasmuch as they are directors to carry on the business of the company, it appears to me that they would be justified in using their own monies, whether in their own pockets, or obtained by borrowing for the purpose; they would be justified in using them for the legitimate business of the company." "When the money is applied specifically for the benefit of the company, you can recover that; because it is carrying on the business of the company by a person who is entrusted to carry it on." 29 L. J., Ch. 415. Mr. Lindley has indeed laid down the broad proposition, that "where directors of a company, acting *bonâ*

Par. 22 (1).

fide and to the best of their judgment, advance money in order to carry on the business of the company, and spend the money for that purpose, they are entitled to be reimbursed by the company, although they had no authority to borrow money, *and could not have rendered the company liable to third persons.*" Lindley on Partnership, 2nd edit., p. 744.

Mr. Lindley (pp. 747 *et seq.*) argues cogently against the morality of this doctrine, as the directors, being trustees knowing the power of the company, have no right to carry on the business without the sanction of the shareholders, when they have no funds applicable to that purpose. It is submitted, however, that the cases do not bear out the latter part of Mr. Lindley's proposition, and that the true test is, whether the company have received the benefit of the advances; and perhaps even a stronger test will be applied against directors than against strangers, in whose case the test will merely be, whether the money has been *bonâ fide* applied for the purposes of the company; while in the case of directors, it may be taken into consideration whether the outlay they have made was prudent or necessary, and whether it would have been proper to wait till the sanction of the shareholders could be obtained. And it is thought the remarks of V. C. Kindersley, when considered in connection with the circumstances of the case, will not be found opposed to this view.

Test of benefit.

In illustration of this it is suggested that in such a case as *Re The Worcester Corn Exchange* the directors would probably be allowed to prove for any additional sum realized in the winding-up from the buildings by reason of the unauthorised expenditure not exceeding such expenditure.

Remedy.

It is to be observed that no case has yet arisen where a person, having an equitable claim of this nature against a company, has enforced the same by suit, except where there was another reason for coming to the court; neither has a winding-up order been made on a debt of this description. It is supposed that as the court recognises this equity when it can be otherwise brought before them, it will not refuse its active assistance by bill when no other mode of enforcing it exists.

In *Re The Court Grange Silver Lead Mining Co., e.p. Sedgwick*, 2 Jur., N. S. 949, a shareholder's right to contribution for advances of this description was thought a proper reason to make a winding-up order; but there was another valid ground for making the order.

Equity of companies in respect of loss or dealings *ultra vires*.

23. On the other hand, when contracts *ultra vires*, attempted to be entered into on behalf of companies, have been partly carried out, it is apprehended that the company would have no remedy at law, but the persons dealing with them would be considered as having knowingly (1) joined in a breach of

trust with the directors, and liable in equity to recoup the company any loss sustained (2).

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(1) See *ante*, par. 13 (3), p. 48.

(2) Directors had voted that paid up shares should be divided among the promoters. D., who was a director and promoter, had received 200 such shares. He was held liable to contribute as if the shares had nothing paid on them. *Universal Provident Life Assurance Co., Daniell's Case*, 1 De G. & J. 372.

Where the directors of a company had shares issued to them *ultra vires*, they were made contributories. *Royal Bank of Australia, e.p. Robinson's Exors.*, 2 D. M. & G. 517.

A person who had taken preference shares in an incorporated company sought to be removed from the list of contributories on the ground that the directors were not empowered to issue such shares. *Vale of Neath Brewery Co., e.p. Hitchcock*, 3 De G. & Sm. 92.

But a holder of shares in an unincorporated company issued *ultra vires* was taken off the list of contributories under the Winding-up Act, 1856. *Tipperary Bank, e.p. Ginger*, 5 Ir. Ch. Rep. 174.

Where A. bought shares on the Stock Exchange, received dividends, and paid calls after the winding-up of the company, he was precluded from raising a question as to the illegality of the issue of the shares. *Mexican and South American Co., e.p. Barclay*, 27 L. J., Ch. 660.

Where L. speculated in the shares of a company on behalf of the company, and the directors paid him what he had advanced out of the funds of the company, at the suit of one of the shareholders, on behalf of himself and the rest of the shareholders, he was ordered to refund. *Gray* v. *Lewis*, 17 W. R. 431.

Where a stockbroker had been paid part of the price of shares bought to qualify a person to be a director out of the funds of the company, in a suit by the official liquidator in the name of the company against the stockbroker, to which neither the directors who paid the money, nor the purchaser of the shares were parties, the Master of the Rolls refused to order the stockbroker to refund on the ground that the whole transaction could not be annulled. *London, Hamburgh and Continental Exchange Bank* v. *Henry*, L. R., 7 Eq. 334.

Directors of a company, upon an arrangement for the discharge of G. a debtor of B.'s from prison, agreed with B. to hand him scrip certificates in the company originally allotted to G., upon the understanding that B. should not be liable for the debts and engagements of the company, but should participate in the profits as a shareholder. The arrangement was *ultra vires*, but as B. had derived no benefit from the transaction, he was not made a contributory. *Electric Telegraph Co. of Ireland, Burne's Case*, 29 L. J., Ch. 913; 2 D. F. & J. 275.

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24. If each individual member (1) of company gives his assent to the doing of an act on behalf of the company, such act

Application of the doctrine of acquies-

Par. 24. cence to companies.

can be done provided it is legal, though it may be beyond the power of the company without such assent (2). And, therefore, when the agents, directors, or general meeting of a company, purport to do such an act on behalf of the company, notice of which can be imputed to the members, such act will bind every member who does not take active steps to stop it within a reasonable time (3).

Who is bound by acquiescence.

(1) *Semble*, a subsequent holder is not bound to a course of action *ultra vires* acquiesced in by original holders. *Bloxam* v. *The Metropolitan R. Co.*, L. R., 3 Ch. 354.

But in a prior case it was held that a purchaser could not sue to restrain the company from doing acts in which his vendor had acquiesced. *Ffooks* v. *London and South Western R. Co.*, 1 Sm. & G. 168. And it is thought that this will not be considered overruled by the above *dictum*.

No cases have arisen in which a decision has been made in respect to the effect of disability on acquiescence. See *Phœnix Life Assurance Co.*, *e.p. Burges*, 31 L. J., Ch. 794; 2 J. & H. 441.

To what transaction principle is applicable.

(2) Shareholders have been held bound by acquiescence in the following transactions:—The purchase of the business and taking the liabilities of one life assurance company by another. *Re The Era Life Assurance Society*, 32 L. J., Ch. 206.

The purchase by a company of its own shares placed in the name of a trustee. *Gregory* v. *Patchett*, 33 Beav. 595; *British Provident Assurance Co.*, *e.p. Grady*, 32 L. J., Ch. 326; 1 D. J. & S. 488; *e.p. Lane*, 33 L. J., Ch. 84; 1 D. J. & S. 504.

The forfeiture of shares by an unlimited company. *Evans* v. *Smallcombe*, L. R., 3 E. & Ir. 249; 37 L. J., Ch. 793.

In the allowance of preference dividends on capital paid up after a fixed day. *Re London Permanent Building Society*, 17 W. R. 513. In respect of an account relative to the winding-up of an abortive company. *Stupart* v. *Arrowsmith*, 3 Sm. & G. 176.

An agreement of letting navigation tolls. *Gray* v. *Chaplin*, 2 Russ. 126.

The completing a railway after the proper time had elapsed. *Ffooks* v. *London and South Western R. Co.*, 1 Sm. & G. 168.

The construction of only a small portion of a railway. *Graham* v. *Birkenhead, &c. R. Co.*, 2 M. & G. 146.

It seems that acquiescence in a course of acts beyond the power of majorities will not bind a shareholder to future acts of the same kind. "If the acts of the directors were positively illegal, the fact of knowing them, or even of deriving benefit from them, would not have prevented the original holder of the stock from afterwards objecting to similar acts." *Per* L. C. Cranworth, *Bloxam* v. *Metropolitan R. Co.*, L. R., 3 Ch. 354.

The court refused to set aside an unauthorized sale of the assets of a company made by the liquidator at the instance of a shareholder who had stood by. *Hereford Hotel Co.*, 18 L. T., N. S. 144.

A shareholder by not applying early enough lost his right to have order to wind-up company discharged, unless he paid the costs already incurred. *Metropolitan Carriage Co., e.p. Clarke*, 1 K. & J. 22.

As to the application of the doctrine of acquiescence to giving a person the right or imposing on him the liabilities of a member, see *post*, par. 32.

What amounts to acquiescence.

(3) The lapse of time after notice to the shareholders can be shown as proof of acquiescence. "But mere time alone without such knowledge could never grow into proof of acquiescence." *Per* Lord Chelmsford, *Spackman* v. *Evans*, L. R., 3 E. & Ir. 233; 37 L. J., Ch. 785.

Again, the same judge said, "No mere time can alter the character of a transaction, *Quod ab initio non valet in tractu temporis mero non convalescit.* Length of time may in many cases materially assist in establishing the presumption of acquiescence in an act which requires confirmation to give it validity." *Evans* v. *Smallcombe*, L. R., 3 E. & Ir. 260; 37 L. J., Ch. 798.

L. C. Cairns, "In my opinion lapse of time alone certainly would not make valid that which was at the beginning invalid." *Ib.*, L. R., 3 E. & Ir. 253; 37 L. J., Ch. 795.

When the business of a life insurance company had by the authority of a special resolution been extended to the issue of marine insurance policies, and the extended business carried on for a year and a half, and the shareholders had received dividends, V. C. Wood held, the shareholders were not bound by acquiescence; he founded his decision chiefly on the shortness of the time that had elapsed; he said, "When the case shall arise of a company going on for several years prosperously, with the shareholders pocketing all the profits of an illegal course of proceeding, and their objecting to what has been done, it will be sufficient to determine that when it is done. But to hold, in this case, upon the simple grounds stated in the admissions, that upon one dividend being sent—for the whole course of this illegal proceeding continued only for a year, or a year and a half, before the company was broken up by it—the person is to be held under these illegal engagements, would be utterly at variance with the principles of all the decided authorities." *Phœnix Life Assurance Co., e.p. Burges*, 31 L. J., Ch. 751; 2 J. & H. 441.

Where one society had purchased the business of another, the fact that the purchase had been entered upon, and it was impossible to put the parties in the same position, was considered a material element in holding that it was too late to disturb the transaction. The time between the purchase of the business and the winding-up of the purchasing company seems to have been about three years. *Re The Era Assurance Society*, 32 L. J., Ch. 207.

Re Vale of Neath Brewery Co., Morgan's Case, 1 M. & G. 225; *Lawe's Case*, 1 D. M. & G. 421; *e.p. Richmond's Exors.*, 3 De G. & Sm. 96, the lapse of five years did not relieve persons who had sold shares to the company from liability to contribute. But in *Gregory* v. *Patchett*, 33 Beav. 595; 13 W. R. 34, after the lapse of six years: and in *Re The British Providence Assurance Society, e.p. Lane*, 1 D. J. & S. 504; 33 L. J., Ch. 84, after the lapse of five years: acquiescence in the purchase of its own shares by a company was imputed.

Where a company entered into an arrangement in May to amal-

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gamate with another which was *ultra vires*, in June a shareholder signified his dissent, and filed a bill to set aside the arrangement in November, he was not precluded by delay. *Clinch* v. *Financial Corp.*, L.R., 4 Ch. 117; 38 L. J., Ch. 1; 5 Eq. 450; 37 L. J., Ch. 281.

A subscriber to an abortive company was not allowed to open up an account of the preliminary expenses three years after stated. *Stupart* v. *Arrowsmith*, 3 Sm. & G. 176.

What amounts to notice.

Under what circumstances notice will be imputed to a shareholder has been much discussed recently in the cases connected with the *Agriculturists' Cattle Insurance Co.*, and opinions upon the subject have been very conflicting. The result of the cases appears to be, that express notice must be given to every shareholder that the matter *ultra vires* was intended to be done, or that it had been done, or they must have actual knowledge of the facts. The mere means of knowledge is not sufficient. Notice will not be imputed in cases of this sort to the whole body of shareholders, though there might be sufficient to impute notice to a shareholder seeking to set aside a contract to take shares (see *ante*, p. 60). Lord Chelmsford said, "It can hardly be said that acquiescence by a dispersed body of shareholders in the illegal acts of directors can be presumed, because they might have discovered that the acts were in excess of the powers conferred by the deed of settlement. I cannot think that in such a case it is sufficient to show that the shareholders, by the examination of the books of the company, might have made themselves acquainted with the unauthorized acts of the directors, for such an examination would in most cases be to many of them impracticable or useless; but knowledge of those acts ought to be brought home to them, either expressly or by necessary implication, before any presumption of acquiescence in them can be fairly raised." *Spackman* v. *Evans*, L. R., 3 E. & Ir. 234; 37 L. J., Ch. 787.

On November 2, 1848, a meeting of the shareholders of the Agriculturist Cattle Insurance Company was held, at which arrangements were proposed by which the directors should be enabled to forfeit the shares of those persons who wished to retire from the company. On the next day notice of this and that the meeting had been adjourned to the 13th of November, when it was intended to give the directors power to carry out the arrangement, was sent to each shareholder, with a form to be filled up and returned on or before that date if they wished to retire from the company on the terms proposed. Some of the shareholders accepted the terms by returning the form filled up as required, among whom was Mr. Brotherhood. The meeting was held on the 13th November, and the arrangement was ratified. It does not appear that any notice was sent of what was done to the shareholders, or any notice of the names of the shareholders who had accepted the terms of retirement, beyond that it was acted on by the directors, and the names of the retiring shareholders were removed from the list registered in pursuance of the then existing Joint Stock Companies Acts. In 1868, an order to wind up the company was made. The Lords Justices, affirming a decree of the Master of the Rolls, held that the shareholders were affected with notice and bound by acquiescence, so that Brotherhood could not be made a contributory of the company. *Re The Agriculturist Cattle Insurance Co., e.p. Brotherhood*, 34 L. J., Ch. 861. Smallcombe

accepted the arrangement which was carried out, except so far that he paid a sum of money which he ought to have paid in cash by bills of exchange; his case went to the House of Lords, where it was held that he was not a contributory (Lord Chelmsford dissenting on the ground, amongst others, that there was not sufficient notice). *Evans* v. *Smallcombe*, L. R., 3 E. & Ir. 249; 37 L. J., Ch. 793. Shareholders, however, who entered into similar arrangements with the directors after the meeting of 13th November, 1848, were held to be contributories. The report sent round to the shareholders from time to time showed that a large number of the shares were forfeited, and that the company had received large sums of money from the shareholders whose shares were attempted to be forfeited; but as the directors had power to forfeit, they had a right to assume that every thing was done as it ought to have been done. *Stanhope's Case*, L. R., 1 Ch. 161; 35 L. J., Ch. 296; *Stewart's Case*, L. R., 1 Ch. 511; 35 L. J., Ch. 750; *Houldsworth* v. *Evans*, L. R., 3 E. & Ir. 263; 37 L. J., Ch. 800; *Spackman* v. *Evans*, L. R., 3 E. & Ir. 171; 37 L. J., Ch. 752.

These cases seem to conflict with the decisions in *Grady's Case* and *Lawe's Case*, both of which, however, can be supported on other grounds. Dr. Grady, a shareholder in the British Provident Assurance Society, brought an action for work done for the company; the action was compromised by the directors, and he transferred his shares to S., who was a nominee of the company. Two years afterwards the company was wound up, the transfer was entered in the books of the company, and the name of S. returned as holder of the shares to the registrar of joint stock companies. Lord Westbury said, there was "everything that was necessary to give notice to every shareholder of what had taken place." *British Provident Assurance Society, e.p. Grady*, 32 L. J., Ch. 426; 1 D. J. & S. 488. In the same company, Lawes, who had been a director, transferred his share to the company, who could hold them by consent of a general meeting; an entry of the transfer was made in the books of the company, and in the return to the registrar the company was the nominal shareholder. V. C. Kindersley thought there was not notice to the shareholders, but Lord Westbury thought otherwise. *Lawe's Case*, 35 L. J., Ch. 84; 1 D. J. & S. 504.

Where a person had contracted to take 620 shares, but was put on the register only for ten, he was held bound to contribute in respect of all the shares. *North Shields Quay Co., e.p. Davidson*, 4 K. & J. 688; 27 L. J., Ch. 488.

In *Bargate* v. *Shortridge*, 5 H. L. 297; 24 L. J., Ch. 475, all the shareholders were thought affected with notice of a course pursued with respect to all transfers of shares.

It may be doubted whether notice convening a meeting to confirm a special resolution to extend the objects of the business, and a subsequent circular announcing the establishment of the extended business issued to the shareholders, will be sufficient to impute knowledge to them. *Re Phœnix Life Assurance Co., e.p. Burges*, 31 L. J., Ch. 749; 2 J. & H. 441.

CHAPTER IV.

PERSONAL RIGHTS AND LIABILITIES OF DIRECTORS AND AGENTS.

Status of directors (*a*).

25. Directors, as other agents (1), are in the position of trustees (2). They will not be allowed to derive a private benefit from dealings made on behalf of the company (3) (*b*). They are responsible for losses incurred by acting beyond their powers, or through gross mismanagement or neglect (4). There is no rule at law to prevent directors of companies governed by the Act of 1862 dealing with their companies; but the Court of Chancery will not render any assistance to enforce such contracts (5) (*c*). Directors are entitled to no remuneration for services rendered to the company, other than what may be provided by the regulations of the company or the shareholders (6). They are entitled to indemnity for losses and expenses incurred in discharge of their duties (7).

To what persons rules are applicable.

(1) These principles are applicable to persons acting in a fiduciary relationship at the time of the contract. Where a person acted as director, but had not been formally appointed, the court, under 7 & 8 Vict. c. 110, s. 29, disallowed a claim under a contract for executing works for the company. *South Essex Gas Co., e.p. Stears*, 29 L. J., Ch. 43. But a contract which would have been void if entered into by a director was not rendered void by the contractor's subsequently becoming a director. *Re Waterloo Life Assurance Co., e.p. Paul*, 33 L. J., Ch. 455. They do not affect a director in the character of shareholder. A rule that a director

(*a*) *Qualification of Directors.*—The regulations of companies frequently provide that directors must hold a certain number of shares; when that is the case, a director may mortgage his shares. *Cummings* v. *Prescott*, 2 Y. & C. 488.

(*b*) As to the effect of such fraud on the rights of third parties, see *ante*, **21** (2), (3), pp. 86, 87.

(*c*) Under the Act of 1844, s. 29, such contracts were void at law. In companies which have adopted the regulations contained in Table A. of "The Companies Act, 1862," art. (57), or Table B., art. (47), of the Act of 1856, directors vacate their office by entering into such contracts. For cases on the construction of clauses prohibiting dealings between directors and these companies, see *post*, C. A. 1862, Table A., art. (47), notes.

might not vote in any matter in which he was personally interested did not prevent his voting as a shareholder. *East Pant Du Co.* v. *Merryweather*, 2 H. & M. 254 ; 5 N. R. 166.

Promoters are within the application of this rule. See *Hichens* v. *Congreve*, and other cases in note (3).

A person to whom the contract has been assigned is in no better position than the director himself. *Flanagan* v. *The Great Western R. Co.*, L. R., 7 Eq. 116 ; 38 L. J., Ch. 117.

How far director is a trustee.

(2) Directors are trustees to the extent that lapse of time is no bar to a suit for account by the company, or on behalf of the whole body of shareholders. *Williams* v. *Page*, 24 Beav. 654; 27 L. J., Ch. 425 ; *Stainton* v. *Carron Co.*, 24 Beav. 346 ; 27 L. J., Ch. 89.

Their liability extends to the estate of deceased directors. *Turquand* v. *Marshall*, 37 L. J., Ch. 582; L. R., 6 Eq. 112.

Semble, it would be a breach of duty to retire to enable other directors to act wrong. *Re Marylebone Joint Stock Banking Co., Stanhope's Case*, 14 Jur. 610.

The remedy of companies against their directors is by suit in equity. See cases in the next two notes. A summary mode of making them account in winding-up proceedings has been provided by the Companies Act, 1862, s. 165.

Cannot delegate discretionary powers.

The allotment of shares is a matter requiring the personal discretion of the directors, and so the power of alloting could not be delegated to two directors and the manager of a bank. *Re Leeds Banking Co., Howard's Case*, L. R., 1 Ch. 561. The directors cannot delegate their powers to a number of themselves, even greater than a quorum, every director having a right to attend the meetings. *Great Western R. Co.* v. *Rushout*, 5 De G. & S. 290.

This, of course, is not to be confounded with the power of appointing necessary agents, *ante*, p. 42. Nor with the delegation of mere ministerial acts, which for the sake of convenience are frequently deputed to a small number of the directors. A power of drawing cheques was deputed to any three of a managing committee ; cheques drawn by three of such committee were held valid. *Re Gloucester and Aberystwith R. Co.*, 18 Jur. 815.

See remarks of V. C. Wood, *Re Era Insurance Co., e.p. Williams*, 30 L. J., Ch. 137, with respect to the discretion required in granting policies.

Are not trustees for individual shareholders,

Directors are not in the position of trustees to their individual shareholders, and therefore a shareholder cannot sue in his own behalf in respect of frauds which are frauds on the whole body of shareholders equally with himself. *Macbride* v. *Lindsay*, 9 Hare, 574.

A shareholder filing a bill to restrain the directors doing acts *ultra vires*, is not entitled to costs as between solicitor and client. *Morgan* v. *The Great Eastern R. Co.*, 1 H. & M. 160.

nor agents of one another.

The directors are not the agents of one another, nor are the servants of the company their private agents.

Where a secretary of a company altered a guarantee from the directors of a bank, without their knowledge, it was held that the document was in the custody of the bank, as distinguished from the individual directors, and the alteration discharged them. *Bank of Hindustan, China and Japan* v. *Smith*, 36 L. J., C. P. 241.

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But where one director is compelled to pay a sum they are all liable for, he has a right to contribution from the others. Four directors had retained an attorney to defend them against tradesmen who were suing for goods supplied to the company. One of them paid the attorney. *Semble*, he could recover from each of the others one fourth part, and was not bound to make himself a creditor of the company at large. *Edge* v. *Knapp*, 7 Jur. 583.

Must account for private gains.

(3) A lease had been bought for 25,000*l.* by a company, but 5,000*l.* of it had been distributed among the directors. They were made to account for the same in equity. *Hichens* v. *Congreve*, 1 R. & M. 150.

Where a solicitor made profit out of a sale to a company, he was made to refund. *Bank of London* v. *Tyrrell*, 10 H. L. 26.

The directors of a company which amalgamated with another company received money. This was held *primâ facie* to belong to their company, and they were ordered to pay the money into court. *Gaskell* v. *Chambers*, 26 Beav. 360; 28 L. J., Ch. 385.

Shares were placed at the disposal of the directors, and one of them sold many of them for his own benefit, accounting to the company for what was due on deposit and calls. He was made to account to the company for the whole of the money he had received. *York and Midland R. Co.* v. *Hudson*, 16 Beav. 485.

A director had purchased a vessel and resold it to the company at a higher price, as from a stranger; it was held that the transaction could not stand. *Benson* v. *Heathorn*, 1 Y. & C. C. C. 326.

A corporation was created by charter, and four persons had been at first the only shareholders, where it was alleged they had falsified their accounts by debiting the company with expenses never incurred, and sold shares on that footing, a demurrer to a bill for an account of those expenses was overruled. *Society of Practical Knowledge* v. *Abbott*, 2 Beav. 559.

The capital of a banking company was to consist of 60,000 shares. The prospectus stated that the first issue would be of 30,000 shares. The articles empowered the directors to commence business as soon as they should think fit, notwithstanding the whole capital might not have been subscribed for, and provided that upon the first allotment of shares 10,000*l.* should be paid the promoters. When only 5,000 shares had been subscribed for, and before the company was in a situation to commence business, the directors allotted the shares and paid 5,000*l.* to the promoters, who immediately paid to four of the directors 500*l.* a-piece. The company having been ordered to be wound up: held, in a suit to which the promoters were not parties, that the directors could not be charged with the money paid to the promoters, but that each of the four directors must repay to the company 500*l.* *Madrid Bank* v. *Pelly*, L. R., 7 Eq. 443.

Where, however, a director sells property to a company, and the sale is apparently from a stranger, if the property has not been bought in order to sell to the company, the company are not necessarily entitled to keep the property at the price the director gave for it, but must give a fair value for it or have it set aside. A company had bought a concession which really belonged to one of their directors, of which fact they were ignorant. They filed a bill for an

account against him, offering to do all they ought to do on their part. They then resold the concession. Amended the bill by striking out their offer. The Master of the Rolls held that they had precluded themselves from relief by their conduct. *Great Luxembourgh R. Co.* v. *Magnay*, 25 Beav. 586; 4 Jur., N. S. 839.

For cases where the same principles have been applied to partners, see Dixon on Partnership, 107; Lindley on Partnership, 2nd edit., Bk. III., Ch. II.

Liability for mismanagement and neglect.

(4) Where a board of directors sanctioned the payment of money which had been expended in speculations in their own shares, the directors who attended the board were held liable to recoup the company. *Land Credit Co. of Ireland* v. *Lord Fermoy*, 17 W. R. 562; L. R., 8 Eq. 7. It was no answer that a director sanctioning act *ultra vires* did so as matter of formality and was ignorant.

Directors would have to repay in a winding-up dividends improvidently declared. *Mercantile Credit Co, Stringer's Case*, 17 W. R. 694.

The directors of a banking company are not liable to the company for including in their accounts as good bad debts, unless they can be fixed with knowledge of the fact that they are bad; nor in the absence of fraud for improvidently advancing money even to one of themselves. *Turquand* v. *Marshall*, L. R., 4 Ch. 376.

E. M. was a member of a managing committee till August, 1845, when he retired because he disapproved of the conduct of the chairman in drawing blank cheques; deposits had been paid in amounting to 35,369*l.* at that time. T. M. was made a member of the committee in September, 1845, when there had been paid in 40,878*l.*, of which there remained 24,046*l.* The money was applied wrongfully in purchasing shares of the company. On the winding-up of the affairs of the concern, the master had charged E. M. with the whole sum, and T. M. with the 24,046*l.* The L JJ. thought they had not personally participated in the transactions and discharged the order. *Gloucester and Aberystwith R. Co., e. p. Maitland*, 4 D. M. & G. 769.

S. and B., two of the directors of a company were associated with the managing director as a committee to exercise the general powers of the board of directors. S. and B. signed a cheque and handed it to the managing director, who applied it for purposes forbidden by the articles of association. S. and B. were ordered at the suit of the company to refund the losses sustained by those transactions. *Ottoman Co.* v. *Farley*, 17 W. R. 761.

An agent cannot be permitted to put his duty in conflict with his interests. But where the manager of a bank made advances to companies in which he was a shareholder, such transactions being in the ordinary course of business, and the manager had not exceeded his authority: Held that as a case of fraud and bad faith had not been shown in the dealings between B. and the companies, he could not be made liable for advances. *Bank of Upper Canada* v. *Bradshaw*, L. R., 1 P. C. 479.

Directors who had expended money on objects *ultra vires* were ordered to repay the losses incurred within fourteen days after service of the decree. *Joint Stock Discount Co.* v. *Brown* (2), 17 W. R. 1037.

Directors were held not responsible for paying money for the pur-

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chase of a business to carry on which the company was formed. *Overend, Gurney & Co.* v. *Gurney*, 20 L. T. 652; 17 W. R. 1115.

Equity will not assist directors on contracts with their companies.

(5) The House of Lords in a Scotch case, on principles common to the Scotch courts and the Court of Chancery, refused to enforce a contract by a director for the supply of railway chairs to his company. *Aberdeen R. Co.* v. *Blackie*, 1 Macq. 461. Lord Cranworth said:—"A corporate body can only act by agents, and it is of course the duty of those agents so to act as best to promote the interests of the corporation whose affairs they are conducting. Such agents have duties to discharge of a fiduciary nature towards their principal, and it is a rule of universal application that no one having such duties to discharge, shall be allowed to enter into engagements conflicting, or which possibly may conflict, with the interests of those whom he is bound to protect.

"So strictly is the principle adhered to that no question is allowed to be raised as to the fairness or unfairness of a contract so entered into.

"It obviously is or may be impossible to demonstrate how far in any particular case the terms of any particular contract have been the best for the interest of the *cestui que trust* which it was possible to obtain.

"It may sometimes happen that the terms on which a trustee has dealt or attempted to deal with the estate or interest of those for whom he is trustee have been as good as could have been obtained from any other person, they may even at the time have been better. But still so inflexible is the rule that no inquiry on that head is permitted." 1 Macq. 471.

The Court of Chancery will not make a decree for specific performance in favour of a director or his assignee of a contract on the ground of part performance. *Flanagan* v. *Great Western R. Co.*, L. R., 7 Eq. 116; 38 L. J., Ch. 117.

Remuneration.

(6) Where a director had made advances to his company, a claim of commission or bonus in lieu of interest was disallowed in the winding-up of the company. *Cardiff Preserved Coal and Coke Co., Hill's Case*, 1 N. R. 148.

Directors cannot be considered as servants so as to be remunerated according to the value of work done by them, nor can they vote themselves fees. *Dunston* v. *Imperial Gas Co.*, 3 Bar. & Ad. 125; 1 L. J., K. B. 49.

Remuneration provided by the articles of association was recovered in an action on covenant. *Orton* v. *Cleveland Fire Brick Co.*, 13 W. R. 869.

Indemnity.

(7) The directors of a company having purchased a licence to use a patent, the purchase was sanctioned by a general meeting; the directors were entitled to indemnity against their liabilities in respect of the purchase. *Glandow* v. *Hull Glass Co.*, 19 L. J., Ch. 44.

Two trustees of a joint stock trading company at the request of the directors gave a bond for 1,000*l.* lent to the company; one of the trustees was sued and paid the debt, interest and costs; he was allowed to prove for these, but not expenses incurred by him in raising the money. *Oundle Brewery Co., e.p. Croxton*, 5 De G. & Sm. 432.

By the terms of resolutions on the formation of a company, the object of which was to purchase land and found a colony, certain trustees had the control of an expedition to explore the district, and it was resolved that the expense of the expedition should not exceed a certain sum, and that the subscribers were not to be liable beyond a fixed amount. On the arrival in the country of the persons proceeding on the expedition they were seized and thrown into prison, and owing to this the project failed and the loss greatly exceeded the limit fixed. The trustees could not call on the subscribers beyond the fixed amount. *Gillan* v. *Morrison*, 10 Y. & Sm. 421.

Compare *St. George's Steam Packet Co., e.p. Cropper*, *ante*, p. 45; also cases *ante*, pp. 88, 89.

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26. Directors and agents are not generally (1) liable on contracts entered into with third persons on behalf of a company (2). Where a contract is *ultra vires* of the company, however, they may be liable in damages for holding out that they have a power they do not possess (3).

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(1) An exception to this is under the Companies Act, 1862, s. 42, where the word "limited" is omitted from the description of a company on certain instruments.

As to the liability of persons contracting on behalf of a projected company, see par. **2**, *ante*, p. 11.

Semble, the outside creditors of a mutual marine insurance association were creditors of the individuals who ordered the particular goods or services. *London Marine Insurance Association*, L. R., 8 Eq. 176.

(2) This is founded on the law of principal and agent. In a case where it was sought to make the directors personally liable in equity, L. J. Cairns said, "The company cannot itself act in its own person, for it has no person; it can act only through directors. And the case is, as regards those directors, merely the ordinary case of principal and agent. Wherever an agent is liable, those directors would be liable. Where the liability would attach to the principal and the principal only, the liability is the liability of the company. This being a contract alleged to be made by the company, I own that I have not been able to see how it can be maintained that an agent can be brought into this court upon a proceeding which simply alleges that his principal has violated a contract that he had entered into." *Ferguson* v. *Wilson*, L. R., 2 Ch. 89, where the company had entered into a contract to allot shares, the performance of which became impossible by reason of all the shares having been taken. Principle of rule.

Where written contracts are entered into by directors or other agents of companies, questions often arise as to whether the contract Construction of contracts

Par. **26** (2). with regard to whether made by company or directors.

has been entered into on behalf of themselves or of the company. The test is, that *the agent is bound personally, unless on the face of the instrument which evidences the contract the signature appears to be on behalf of the company.* *Courtald* v. *Sanders*, 15 W. R. 906. And neither the appearance of the name of the agent's company on the instrument, nor the appendage of such words as "director," or "secretary," to the signature, will be considered to denote that the instrument is merely signed by procuration; but in some instances, such words as "on account of the company" in the body of the instrument, have been drawn down into the signature. *Lindus* v. *Melrose*, 3 H. & N. 177; 27 L. J., Ex. 326. The cases on this subject have generally arisen on negociable instruments; they are somewhat conflicting. No doubt, in many instances persons have been held liable on such contracts contrary to their intentions. Probably to obviate this, a provision was inserted with respect to bills of exchange and promissory notes in the Companies Act, 1856 (19 & 20 Vict. c. 47, s. 45), the terms of which were extended by the Act of 1862 (25 & 26 Vict. c. 89, s. 47). The language, however, of neither of these sections does more than express what the law was before. *Courtald* v. *Sanders*, 15 W. R. 906.

Negociable instruments.

Agents liable.

The following are the cases and forms of signature and contract where the agent has been held liable:—

"We jointly and severally promise to pay," "on behalf of the Wesleyan Newspaper Association." Signed. P. S. and J. W. "directors." *Healy* v. *Story*, 3 Ex. 3; 18 L. J., Ex. 8.

"We the directors of the Royal Bank of Australia, for ourselves and other shareholders of this company, jointly and severally promise to pay" "200*l.* value received on account of the company." Signed. T. W. S., J. C., M. B., A. D. "directors." *Penkivil* v. *Connell*, 5 Ex. 381; 19 L. J., Ex. 305.

"Midland Counties Building Society." "We promise to pay." Signed. W. R. H., J. T. "trustees;" W. D. F. "secretary." *Price* v. *Taylor*, 5 H. & N. 540; 29 L. J., Ex. 331.

"Midland Counties Building Society." "We jointly and severally promise to pay." Signed. W. R. H., S. S. B. "directors;" W. D. F. "secretary." *Bottomley* v. *Fisher*, 1 H. & C. 211; 31 L. J., Ex. 417.

"We promise to pay." Signed. H. W. S., W. W., R. J. B., W. W. P. "directors of the Financial Insurance Company Limited." C. G. G. "manager." *Courtald* v. *Sanders*, 15 W. R. 906.

"London Trades Joint Stock Banking Company." "Pay without acceptance." Signed. "For the directors, T. N., manager." *Miller* v. *Thompson*, 3 M. & G. 576 (*a*).

"We the undersigned, being members of the executive committee, on behalf of the L. and S. W. R. Co-operative Society, do jointly promise to pay." *Gray* v. *Raper*, L. R., 1 C. P. 694.

Three directors signed a document intended to operate as an order on the company's bankers. The document was countersigned by the secretary in his own name, with the word "secretary" added.

(*a*) The directors were held liable in that case, but it conflicts with the principle that the agents of the company are not the agents of the directors.

On the document was impressed a stamp with the name of the company in a circular form round the date. Held, the document did not purport to be the cheque of the company, and was not binding on them. *Serrell* v. *Derbyshire R. Co.*, 19 L. J., C. P. 371.

Company liable.

Companies have been held liable on negociable instruments in the following forms:—

"On demand I promise to pay." "For Mistley Thorpe and Walton Railway Company." Signed. "J. S., secretary." *Alexander* v. *Lizer*, L. R., 4 Ex. 402; 38 L. J., Ex. 59.

"We, two of the directors of the Ark Life Assurance Society, by and on behalf of the society, do hereby promise to pay." Signed by two directors, and sealed with the seal of the company. *Aggs* v. *Nicholson*, 1 H. & N. 165; 25 L. J., Ex. 348.

"We, directors of the Royal Bank of Australia, for ourselves and other shareholders of the company, jointly and severally promise to pay," "for value received on account of the company." Signed. J. W. S. "chairman." A. D., J. M. "directors." "Entered, Benjamin Wood, secretary." *Maclae* v. *Sutherland*, 3 E. & B. 1; followed in *Royal Bank of Australia, e.p. Walker*, 18 Jur. 885.

"We jointly promise to pay," "for value received in stock on account of the London and Birmingham Iron and Hardware Company Limited." Signed. J. M., G. N. W., J. H. "directors." *Lindus* v. *Melrose*, 3 H. & N. 177; 25 L. J., Ex. 326.

"*Sea, Fire and Life Assurance Society.*" "To the cashier." "Credit A. or order with," "on account of this corporation." A. D., W. O. "directors." "Entered, F. F. A." accountant. *Allen* v. *Sea, Fire Assurance Co.*, 9 C. B. 574; 19 L. J., C. P. 305.

"UNION BANK POST BILL." "We promise to pay on account of the proprietors of the Union Bank of Calcutta." Signed. J. R., W. P. G. "directors." H. W. A. "secretary." *Forbes* v. *Marshall*, 11 Ex. 166.

Other contracts. Agents not liable.

Where directors had induced contractors to enter into an agreement with a company *ultra vires*, upon a bill by the surviving contractor against these directors to make them perform the contract or to make good the representations made, a demurrer was allowed, the remedy being, if anywhere, in an action for damages. *Ellis* v. *Colman*, 27 L. J., Ch. 611; 25 Beav. 662.

A bill was filed to make the directors of a railway company who had issued Lloyd's bonds *ultra vires* personally pay the amount with interest. It was sought to make them responsible on the ground that the plaintiff had been informed that the company had the power. It was held that the misrepresentation was a matter of law, and was no ground for relief in equity. *Marshall* v. *Ford*, L. R., 2 Eq. 550; 35 L. J., Ch. 739.

Where a surveyor had been employed by a committee of a benefit building society in matters *ultra vires*, it was held that there was no evidence to go to the jury that one of the committeemen personally employed him, though Baron Bramwell seems to have thought that the fact that the work was *ultra vires* was evidence that the plaintiff treated with the committeemen personally. *Alexander* v. *Worman*, 3 L. J., Ex. 198; 6 H. & N. 100.

Where a company purported to enter into a contract to indemnify, which was *ultra vires*, the directors were held not liable to indem-

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nify personally. *Re Marylebone Banking Co., Walker's Case*, 26 L. J., Ch. 261.

An agreement for a lease of certain premises, containing a stipulation that the lessees should execute certain building works, and that the lessor should advance 1,000*l.* on mortgage to a limited company, was executed by the directors and secretary of a company as lessees. The 1,000*l.* was advanced, and the lessor, the plaintiff, had in correspondence treated the company as liable to perform the stipulations as to building. A decree for specific performance of the lease was made against the directors and secretary personally, but specific performance of the building stipulations was refused. *King* v. *Johnson*, 2 H. & M. 118.

Agents liable.

A., B. and C. on behalf of themselves and other members entered into articles with D. to provide necessaries for the use and accommodation of a club. They were personally bound. *Queensberry* v. *Cullen*, 1 Bro. P. C. 396.

In *Cullen* v. *Queensberry*, 1 Bro. C. C. 100, the committee of a voluntary society, and *Husley* v. *Bell*, 1 Bro. C. C. 101, n., the trustees of a navigation, were considered liable personally on bill in equity for goods supplied and work done; it is thought, however, that these cases could not be followed.

Difference having arisen between B. the managing director and the other directors of a bank, a resolution was passed at a meeting of the directors, that "The board are willing to accept Mr. B.'s resignation and to pay him his proportion of salary due, and at the same time the members of the board will jointly relieve him of his shares and guarantee him against all calls." The offer was accepted and partly carried out. The directors who were present at the meeting were held liable individually to indemnify B. for calls he was compelled to pay. *Barker* v. *Allan*, 29 L. J., Ex. 100; 5 H. & N. 61.

See further *ante*, p. 5.

Actions and suits.

Where, under the Winding-up Acts, 1848, 1849, the official manager sued as such, the court had jurisdiction to order him personally to pay the costs. *Grand Trunk, &c. R. Co.* v. *Brodie*, 3 D. M. & G. 146.

The proper form is to order costs against him, leaving him to get his indemnity. *Official Manager of the Consols Mining Co.* v. *Wood*, 2 Dr. & Sm. 353.

Where certain costs had been incurred by alleged contributories in attending a meeting before the master which had been incurred through the previous default of the official manager: Held, that the court had not jurisdiction to order the official manager personally to pay such costs. *Cambridge and Colchester R. Co., e. p. Marsh*, 19 L. J., Ch. 161; 1 M. & G. 302.

Damages for misrepresentation.

(3) Two directors of a company stated by letter that they had appointed C. to be legal manager of their company and had authorized him to draw cheques. They had no authority to do this. They were held liable in assumpsit for breach of warranty. *Colonial Bank of Australia* v. *Cherry*, 17 W. R. 1031.

Where the holder of a bill of exchange accepted on behalf of a company sued the directors for falsely representing they had authority to accept on behalf of the company, the defendants obtained a verdict, the plaintiff not having proved he had sustained any damages. *Eastwood* v. *Bain*, 3 H. & M. 738; 28 L. J., Ex. 74.

27. Directors and agents are personally responsible for frauds and other torts, though committed in prosecution of the business of the company, or for its benefit (1). Liability for torts.

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(1) They are liable jointly and severally at law for damages. A director was held liable in an action for damages to a person who had been induced to take shares in a company through statements made to the committee of the Stock Exchange. *Bedford* v. *Bagshaw*, 29 L. J., Ex. 59. In a similar case where false reports had been made to the shareholders, *Scott* v. *Nixon*, 29 L. J., Ex. 62: where false advertisements had been issued, *Cullen* v. *Thompson*, 2 Macq. 422; 9 Jur. 85. Executors of one of the directors was held liable in an action for damages by the executors of a person who had been induced to take shares by the misrepresentation of the company. *Davidson* v. *Tullock*, 6 Jur., N. S. 543. At law.

The measure of damages was the difference between the price paid and what would have been a fair price. *Ib.*

Delay in taking proceedings was not allowed to be a defence. *Ib.*

An action for deceit will lie against manager and secretary for issuing false reports. *Cutler* v. *Thornton*, 9 Jur., N. S. 85.

A prospectus purported to guarantee a minimum dividend. A party who took shares on faith of that guarantee, which failed, maintained an action against one of the promoters. *Gerhard* v. *Bates*, 2 El. & Bl. 476; 22 L. J., Q. B. 364; 17 Jur. 1097.

An action was maintained against some directors, the secretary and solicitor of a company for misrepresentation contained in a prospectus and balance sheet of a company, whereby the plaintiff was induced to take shares. *Bale* v. *Cleland*, 1 F. & F. 144.

In an action for damages at law against directors they were held not liable for loss sustained by a purchaser of shares where they had published false reports without any intention to deceive and not knowing them to be false. *Taylor* v. *Ashton*, 11 M. & W. 401; 12 L. J., Ex. 363.

Where an action was brought against promoters of a company by persons who had been induced to take shares by reason of misrepresentation contained in a prospectus, Cockburn, C. J., put it to the jury to decide: (1), whether the representations were false in fact; (2), whether the defendants knew them to be false; (3), whether the plaintiff acted on the faith of the representations. *Moore* v. *Burke*, 15 L. T., N. S. 118.

See also *ante*, p. 104, note (3).

Where proceedings were taken in equity against the company to set aside a contract for shares on the ground of misrepresentation, directors were decreed personally to repay what had been paid on the shares. *Henderson* v. *Lacon*, L. R., 5 Eq. 250. In equity.

Where a person had been induced to buy shares from a director from the false reports circulated by the directors generally, he filed a bill against that director alone praying for return of his purchase-money and indemnity, offering a retransfer of the shares, a demurrer for want of equity and parties was overruled. *Stainbank* v. *Fernley*, 9 Sim. 556.

In a suit to restrain a company from infringing a patent and for

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an account, costs were decreed against the directors personally. *Betts* v. *De Vitre*, 34 L. J., Ch. 289 ; 5 N. R. 165.

Where there is not such fraud as will induce the court to set aside a contract to take shares, the directors, though there may have been fraud for which they must account to the company, cannot be personally liable to the person who had taken the shares. *Heyman* v. *European Central R. Co.*, L. R., 7 Eq. 165.

For what misrepresentations amounts to fraud, see *ante*, p. 60 *et seq.*

Misdemeanors and crimes.

28. Directors are liable in some instances to statutory penalties for the non-performance of duties cast on companies by the legislature (1). They are criminally responsible for the fraudulent appropriation of property, falsification of accounts, destruction of books, and publication of mis-statements (2).

(1) Directors are liable to penalties under the Companies Act, 1862, ss. 25, 27, 32, 34, 44, 46, 53, 54 and 58, and the Companies Act, 1867, ss. 7, 22, and 39.

It seems that a breach of statutory duty is of itself a misdemeanor. Lord Campbell said, in a case where the business of the company had been commenced before provisions as to capital required by 7 & 8 Vict. c. 119, had been complied with: "The directors, I believe, in strict law, would have been indicted, because to violate an act of parliament, although there is no specific penalty annexed to that violation, is a misdemeanor, and a person who does so is liable to be indicted and punished." *The London and Eastern Banking Corporation, e.p. Longworth's Executors*, 29 L. J., Ch. 64.

Criminal offences by directors, &c.

(2) In *Burnes* v. *Pennell*, 2 H. L. 497; 13 Jur. 897, it was said that directors were criminally responsible for false statements, and by declaring dividends out of capital would be guilty of conspiracy.

In *R.* v. *Esdaile*, 1 F. & F. 213, directors were prosecuted for conspiring to issue shares beyond the powers of their company.

The statute 24 & 25 Vict. c. 96, enacts as follows:—

24 & 25 Vict. c. 96.

Sect. 81. *Directors of any body corporate or public company fraudulently appropriating property.*] Whosoever, being a director, member or public officer of any body corporate or public company, shall fraudulently take or apply for his own use or benefit, or for any use or purposes other than the use or purposes of such body corporate or public company, any of the property of such body corporate or public company, shall be guilty of a misdemeanor, and being convicted thereof, shall be liable, at the discretion of the court, to any of the punishments which the court may award as hereinbefore last mentioned (*a*).

(*a*) The reference here is to the 75th section, whereby several other offences are made misdemeanors, which render the offenders liable, "at the discretion of the court, to be kept in penal servitude for any term not exceeding seven years, and not less than three years, or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement."

Sect. 82. *Keeping fraudulent accounts.*] Whosoever, being a director, public officer or manager of any body corporate or public company, shall as such receive or possess himself of any of the property of such body corporate or public company otherwise than in payment of a just debt or demand, and shall, with intent to defraud, omit to make or to cause or direct to be made a full and true entry thereof in the books and accounts of such body corporate or public company, shall be guilty of a misdemeanor, and being convicted thereof shall be liable, at the discretion of the court, to any of the punishments which the court may award as hereinbefore last mentioned.

Sect. 83. *Wilfully destroying books, &c.*] Whosoever, being a director, manager, public officer or member of any body corporate or public company, shall, with intent to defraud, destroy, alter, mutilate or falsify any book, paper, writing, or valuable security belonging to the body corporate or public company, or make or concur in the making of any false entry, or omit or concur in omitting any material particular, in any book of account or other document, shall be guilty of a misdemeanor, and being convicted thereof shall be liable, at the discretion of the court, to any of the punishments which the court may award, as hereinbefore last mentioned.

Sect. 84. *Publishing fraudulent statements.*] Whosoever, being a director, manager or public officer of any body corporate or public company, shall make, circulate or publish, or concur in making, circulating or publishing, any written statement or account which he shall know to be false in any material particular, with intent to deceive or defraud any member, shareholder or creditor of such body corporate or public company, or with intent to induce any person to become a shareholder or partner therein, or to intrust or advance any property to such body corporate or public company, or to enter into any security for the benefit thereof, shall be guilty of a misdemeanor, and being convicted thereof shall be liable, at the discretion of the court, to any of the punishments which the court may award, as herebefore last mentioned.

Sect. 85. *No person to be exempt from answering questions in any court, but no person making a disclosure in any compulsory proceeding to be liable to prosecution.*] Nothing in any of the last ten preceding sections of this act contained shall enable or entitle any person to refuse to make a full and complete discovery by answer to any bill in equity, or to answer any question or interrogatory in any civil proceeding in any court, or upon the hearing of any matter in bankruptcy or insolvency; and no person shall be liable to be convicted of any of the misdemeanors in any of the said sections mentioned by any evidence whatever in respect of any act done by him, if he shall at any time previously to his being charged with such offence have first disclosed such act on oath, in consequence of any compulsory process of any court of law or equity, in any action, suit or proceeding which shall have been *bonâ fide* instituted by any party aggrieved, or if he shall have first disclosed the same in any compulsory examination or deposition before any court upon the hearing of any matter in bankruptcy or insolvency.

Sect. 86. *No remedy at law or in equity shall be affected.—Convictions shall not be received in evidence in civil suits.*] Nothing in any

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of the last eleven preceding sections of this act contained, nor any proceeding, conviction or judgment to be had or taken thereon against any person under any of the said sections, shall prevent, lessen or impeach any remedy at law or in equity which any party aggrieved by any offence against any of the said sections might have had if this act had not been passed; but no conviction of any such offender shall be received in evidence in any action at law or suit in equity against him; and nothing in the said sections contained shall affect or prejudice any agreement entered into or security given by any trustee, having for its object the restoration or repayment of any trust property misappropriated.

Sect. 87. *Certain misdemeanors not triable at sessions.*] No misdemeanor against any of the last twelve preceding sections of this act shall be prosecuted or tried at any court of general or quarter sessions of the peace.

Sect. 90. *Inducing persons by fraud to execute deeds and other instruments.*] Whosoever, with intent to defraud or injure any other person, shall by any false pretence fraudulently cause or induce any other person to execute, make, accept, indorse or destroy the whole or any part of any valuable security, or to write, impress or affix his name, or the name of any other person, or of any company, firm or copartnership, or the seal of any body corporate, company or society, upon any paper or parchment, in order that the same may be afterwards made or converted into or used or dealt with as a valuable security, shall be guilty of a misdemeanor, and being convicted thereof shall be liable, at the discretion of the court, to be kept in penal servitude for the term of three years, or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement (*a*).

Directors may be civilly liable to account in a winding-up notwithstanding their criminal responsibility. (C. A. 1862, s. 165.)

Liability to give discovery.

29. Directors and servants of companies are liable to be made parties to suits for the purpose of discovery, and otherwise can be compelled to give discovery on oath (1).

Discovery in equity.

(1) Answers on the part of a corporation are made under the common seal; *Mitford on Pleading*, 223; but in addition discovery on oath can be obtained from officers of a corporation where in the case of an ordinary individual he would personally have been obliged to make such oath, and so it is usual to make some officer of a corporation party to a suit against a company for the purpose of discovery. *Anon.*, 1 Vern. 117.

A demurrer because the bill showed no claim of interest in the defendant in such case has been overruled. *Wych* v. *Meal*, 3 P. Wms. 310; 7 Ves. 289; 14 Ves. 252; *Gibbons* v. *Waterloo Bridge Co.*, 5 Price, Ex. 491; *Dummer* v. *Corporation of Chippenham*, 14 Ves. 259. Where discovery is required by a defendant to a bill in chancery, he cannot get it from officers of the company being plaintiff under

(*a*) See *Reg.* v. *Danger*, 1 D. & B. C. C. 307.

15 & 16 Vict. c. 86, ss. 18, 20, but must file a cross bill; *Imperial Mercantile Credit Association* v. *Whitham*, L. R., 3 Eq. 89; nor can a plaintiff get discovery from an officer who is not a party to the suit. *Attorney-General* v. *East Dereham Corn Exchange Co.*, 5 W. R. 486.

A company was ordered to file a schedule of documents verified by the affidavit of one or more of their officers unless the company should before a given day satisfy the court by sufficient evidence that such affidavit could not be produced. *Ranger* v. *Gt. Western R. Co.*, 2 De G. & J. 74.

It had been previously doubted whether a corporation was within these sections. *Law* v. *Indisputable Life Assurance Co.*, 10 Hare, App. xx.

For form of affidavit as to documents by a public company, see *Seton on Decrees*, 2nd ed. 1042.

At law.

When a corporation is party to a cause an order may be made at the instance of the other party to the cause that some officer to be named (*a*) of such body corporate shall answer on affidavit what documents they have in their possession or power relating to the matters in dispute (17 & 18 Vict. c. 125, s. 50), and an order may be made in an action at law against any person liable to be made party to a suit in equity for the purpose of discovery to compel him to allow inspection of documents in his possession (14 & 15 Vict. c. 99, s. 6).

And any officer of a body corporate which is party to an action at law may be compelled to answer interrogatories (17 & 18 Vict. c. 125, s. 51).

But directors of a company cannot be examined as to the debts of a company under 17 & 18 Vict. c. 125, s. 60, by a judgment creditor. *Dickson* v. *Neath R. Co.*, 17 W. R. 501. But compare *Kingsford* v. *Great Western R. Co.*, 4 N. R. 336, *ante*, p. 22.

What persons may be compelled to give discovery.

An officer cannot get rid of his liability to make discovery on behalf of his company by resigning. Where a secretary of a company had been made a defendant for the purpose of discovery he resigned, but was compelled to make an affidavit as to documents which had been in his custody. *Acomb* v. *Landed Estates Co.*, 14 L. T., N. S. 7. Nor does the winding-up of a company take away the liability to answer. Directors were bound to answer interrogatories under Common Law Procedure Act, 1854, s. 51, in a suit instituted in the winding-up of the company. *Madrid Bank* v. *Bagley*, L. R., 2 Q. B. 37; 36 L. J., Q. B. 15. A liquidator in a proceeding by an alleged contributory in the winding-up of a company is bound to give discovery as if he were defendant to a suit. *Barned's Banking Co., e.p. Contract Corporation*, L. R., 2 Ch. 350; 36 L. J., Ch. 292. An order was made under the Common Law Procedure Act, 1854 (17 & 18 Vict. c. 125), against one of the late directors of a company that had ceased to carry on business. *Lacharme* v. *Quartz Rock Co.*, 31 L. J., Ex. 335; 1 H. & C 124.

Amount of discovery required.

In making an affidavit as to documents, the officers must give all the information in their power. Where directors defendants to a

(*a*) To be named at the discretion of the judge. *Lacharme* v. *Quartz Rock Co.*, 31 L. J., Ex. 335; 1 H. & C. 124.

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suit had filed affidavits stating that they had not in their possession or power any documents other than those which might be in the possession of the company. These being insufficient, they filed others denying they had any documents in their possession or power. These were also held insufficient. *Clinch* v. *The Financial Corpotion*, L. R., 2 Eq. 271.

Where a director was ordered in an action against a company to give inspection of documents under 14 & 15 Vict. c. 99, s. 6, a rule *nisi* for an attachment having been granted for non-compliance with the order or cause being shown, he made an affidavit stating that he had not at the time the order was made, nor had he at any time since in his possession or power any of the documents mentioned in the order. The affidavit was insufficient as it did not state any facts showing that he had no knowledge in whose custody or control the documents were. *Lacharme* v. *Quartz Rock Co.* (2), 31 L. J., Ex. 508.

An officer refusing to produce documents as not being in his control must show by his affidavit that such is the case. Where the clerk of a corporation made an affidavit stating he would not inspect certain documents without the permission of the warden, the affidavit was insufficient, as he did not show that permission had been refused. *Att.-Gen.* v. *Mercers Co.*, 9 W. R. 83.

So where directors in their answer set forth all documents which were in possession of themselves, or their agents, and stated that there were other documents in the custody of the agents of their company, but who were not their agents personally, but that the defendants had no power to use those documents except when sitting at the board of directors or by an order of the board, and that they believed the directors declined to allow them to use the same or to afford them any information which would assist the plaintiff in prosecuting the suit until all the other shareholders should have been made parties. This answer was held insufficient by reason of its not stating that the defendants had applied to the board of directors and been refused leave to procure and give the information required. *Taylor* v. *Rendell*, Cr. & Ph. 104.

An order was made against a defendant, one of a committee of management of a cost-book mining company for production of books in the custody of the secretary. The Master of the Rolls could not easily be persuaded that the secretary would be ordered by the committee of management to refuse inspection of documents. *Chaffers* v. *Woolmer*, 30 L. T. 126.

V. C. Kindersley refused to order defendants, trustees of a company, who at the time of filing the bill had been some of the directors, to produce documents in the control of directors generally. Words of the answer were, "We have in our possession certain documents relating to the matters in question which we have scheduled, but there are at the office of the company, but not otherwise in our possession, certain documents which relate to the matters in question." *Penny* v. *Goode*, 1 Drew. 474 ; 22 L. J., Ch. 371.

Staying proceedings by

Where an action for calls had been brought by an official liquidator in the name of the company, the defendant obtained an order

to interrogate certain directors, and in the meantime to stay proceedings. *Madrid Bank* v. *Bagley*, L. R., 2 Q. B. 37; 36 L. J., Q. B. 15. corporations till discovery obtained.

But the company could enforce the order themselves against the directors. *Ib.*

It seems that when an officer has been made defendant to a cross bill for discovery on oath, a corporation will not be allowed to proceed with the original bill, though they may have no control over that officer until he has put in an answer to the cross bill or they have put forward some other person capable of giving the discovery required on oath. *United States* v. *Wagner*, L. R., 2 Ch. 582; 36 L. J., Ch. 624.

CHAPTER V.

MEMBERSHIP AND THE STATUS, RIGHTS AND LIABILITIES OF MEMBERS.

Membership.

30. A member of a company governed by the Act of 1862(*a*) is a person whose name is on the register of shareholders (*b*) in respect of shares which he has contracted originally to take from the company (*c*), or in which he has acquired the legal interest (*d*). As far as the company is concerned no one as a rule (*e*) has any interest in its affairs, or liability to it in respect of such interest, except the registered owner (1).

Liability of trustees.

(1) A member of a company as trustee is liable in respect of his interest in exactly the same way as any other member is. *British and Foreign Cork Co., Leifchild's Case*, L. R., 1 Eq. 231.

The liabilities of a trustee placed on the list of contributories is not limited to the amount of the trust estate. *Phœnix Life Assurance Co., Hoare's Case*, 31 L. J., Ch. 504; 2 J. & H. 229.

Persons holding shares in trust for the company itself are put on the list of contributories. *Universal Banking Corporation, e.p. Challis*, 16 W. R. 451; *Imperial Mercantile Credit Association, e.p. Chapman and Barker*, L. R., 3 Eq. 361.

A transferor of shares in a railway company is liable to pay calls till the name of the transferee is registered. *Aylesbury R. Co.* v. *Thompson*, 2 R. C. 668.

The directors of a company offered new shares to shareholders and executors of deceased shareholders in proportion to the number of original shares they held. Executors accepted shares as executors. They were made contributories on the winding-up of the company. *Leeds Banking Co., Fearnside and Dean's Case, Dobson's Case*, L. R., 1 Ch. 231; 35 L. J., Ch. 75, 305. L. J. Turner said, "It is true

(*a*) *Other companies.*] — Membership of other companies is constituted in a manner as similar as the regulations and circumstances of such companies allow, and it will be observed that a large proportion of the cases illustrating this paragraph relate to companies not governed by the Act of 1862.

(*b*) As to the *register* of members and title to shares, see C. A. 1862, 25th and following sections.

(*c*) See C. A. 1862, s. 23.

(*d*) As to the nature of the legal interest in shares, see *post*, Ch. VI., par. **39** (2).

(*e*) For *exceptions*, see end of note (1), also the four following paragraphs.

they acquired the shares as executors, but the question is, not in what character they acquired the shares but upon what terms as between themselves and the other contributories they held them when so acquired. I cannot go the length of holding that because a man acquires a right to shares in a company or partnership as executor, he will be entitled to hold them on any other terms." See also *Re Newcastle Banking Co., Spencer's Case*, 17 Beav. 203; *Jackson* v. *Turquand*, H. L., 25th Feb. 1869. Compare *Herefordshire Banking Co., e.p. Bulmer*, 33 L. J., Ch. 609; 33 Beav. 435, *post*, p. 123.

"Accepting trustees" under the Scotch law were placed on the list of contributories. *Royal Bank of Australia, e.p. Drummond*, 2 Giff. 189.

A transferee of shares, which the transferor being a trustee had no right to transfer, was made contributory. The transferee was aware of the trust. *Northumberland and Durham District Banking Co., e.p. Bigge*, 28 L. J., Ch. 50.

The pledgee of shares transferable by delivery was made a contributory. *Patent Elastic Pavement Co., e.p. Price and Brown*, 19 L. J., Ch. 123; 3 D. G. & Sm. 146. Compare *Mexican and South American Co., e.p. Finlay*, 27 L. J., Ch. 664; 26 Beav. 182, *post*, p. 149, where agents who held the documents entitling them to shares which passed by delivery were not made contributories.

Cestui que trust is not liable.

Shares bought by A. were transferred to B., who held them in trust for the infant children of A., who indemnified B. A.'s name was removed from the list of contributories. *North of England Banking Co., e.p. Fenwick*, 18 L. J., Ch. 112; 1 De G. & Sm. 557.

Shares held by a trustee of a company were transferred to S. to qualify him for the office of director, but were never registered in his name. S. was not made a contributory. *Waterloo Life Assurance Co., Saunder's Case*, 2 D. J. & S. 101.

A widow possessed of shares as representing her deceased husband, on her second marriage assigned the shares to a trustee. The legal interest did not pass, and he was not put on the list of members. Though notice of the trust had been inserted in the books of the company, his name was struck off the list of contributories. *North of England Banking Co., e.p. Hall*, 1 M. & G. 307.

C. transferred shares to S. as security for an advance by M. S. died insolvent. The company filed a bill against M. to obtain payment of arrears of calls. The bill was dismissed. *Newry R. Co.* v. *Moss*, 28 L. J., Ch. 633; 14 Beav. 64.

Where a person had bought shares, some in the name of his brother and some in the name of his clerk, he was not made a contributory. *East of England Banking Co., e.p. Bugg*, 35 L. J., Ch. 43; 2 Dr. & Sm. 252.

Cestui que trust has no rights against companies,

Persons equitably interested in shares have generally no rights against the company in respect of their shares, and can only interfere by the intervention of their trustees. See C. A. 1862, s. 30.

On the purchase of stock, through a mistake of the broker the transfer was executed by the vendor to the wrong transferee. His name was struck out and the name of the purchaser inserted, the initials of the vendor being placed, but without his authority, opposite the correction. The transfer was executed by the purchaser, and he was registered as owner of the stock. The purchaser in-

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stituted a suit against the company to set aside an agreement as *ultra vires*. The company was informed of the irregularity in the transfer, and struck the plaintiff's name off the register and replaced the vendor's name, and pleaded that the plaintiff was not a shareholder. The plea was allowed. *Hare* v. *London and North Western R. Co.*, Johns. 722.

except under 5 Vict. c. 5, s. 4.

Under 5 Vict. c. 5, s. 4, however, the Court of Chancery may, on motion or petition of the party interested, without bill filed restrain any public company from permitting the transfer of any stock or shares standing in any name in their books, or from paying any dividends due or to become due thereon; and every order of the court upon such motion or petition is to specify the amount of the stock or the particular share to be affected thereby, and the name or names of the person or persons, body politic or corporate, in which the same is standing.

An application under this section must be founded upon an affidavit verifying the special grounds upon which it proceeds. *E.p. Field*, 1 Y. & C. C. C. 1; *Re Marquis of Hertford*, 1 Hare, 586.

Unless a bill be filed within a reasonable time the order will be discharged. *Re Marquis of Hertford*, 1 Ph. 203.

For the practice under this act, see further *Seton on Decrees*, 3rd ed., p. 920; *Daniell's Ch. P.*, 4th ed., p. 1530.

Other exceptions.

And persons equitably interested in the affairs of a company have been allowed to sue the company in respect of such interest when they had no trustee independent of the company. *Bagshaw* v. *Eastern Union R. Co.*, 7 Hare, 114.

L., a shareholder, had assigned his shares to trustees for the company by way of mortgage; V. C. Kindersley said, "The anomalous position of L. does not seem to me in the smallest degree to put him in a different situation from the other shareholders as regards the advantage or disadvantage" of applying capital and profits in a certain way. There was a provision that the company should not be affected by notice of trusts. *Binney* v. *Ince Hall Coal Co.*, 35 L. J., Ch. 363, 367.

Holders of three shares in a railway company which was incorporated by act of parliament in another company were entitled to one share in the new company, and on demand and delivery up of the certificates of their shares in the old company were entitled to receive a certificate of their share in the new company. A shareholder who had not received his certificate was entitled to sue on behalf of himself and the shareholders in respect of the funds of the company. *Spackman* v. *Lattimore*, 3 Giff. 16.

Inchoate membership.

31. Persons who have contracted to take new shares from a company are, in the event of the company's being wound up, liable to contribute in the same way as if their membership had been complete (1), but in other cases inchoate members neither have the rights nor are subject to the liabilities of membership (2). Where, in order to complete the membership of any

person, there is only wanting registration, or some formality on the part of the company, such person can generally (3)(*a*) compel the company to perform the acts necessary to complete his membership, and the transferor has a similar right against the company ; and though in general the person on the register as member at the time of a winding-up order is liable to contribute (*b*), if he has remained there through default of the company, he can have his name removed and be freed from that liability (4). The company, having the control of the register, have it in their own power, while a going concern, to complete the membership of the transferee ; but it may be doubted whether, after a winding-up order has been made, they have any right to have the register altered (5).

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(1) Numerous cases illustrating this have been already given and will be found throughout Chapter II. Liability on contracts to take new shares.

In a company formed under the Act of 1844, a person under contract to take shares, who had not executed the deed of settlement of the company, was made a contributory. *Universal Salvage Co., e.p. Mansfield*, 19 L. J., Ch. 258 ; 2 M. & G. 57.

The deed of settlement of a company, registered under the Act of 1844, provided that upon the execution of such deed the person executing the same should be entered on the register of shareholders and duly returned to the joint stock registry office, and should thenceforth, but not before, assume the liabilities and privileges of a shareholder. The directors entered the name of an allottee who had not executed the deed and returned it to the registry office. The allottee was made a contributory. *Port of London Ship Owners' Assurance Co., e.p. Yelland*, 21 L. J., Ch. 852.

A person who had contracted to take shares in a cost-book mining company, but had not completed his membership, was made a contributory. *Great Cambrian Mining Co., e.p. Hawkins*, 2 K. & J. 253 ; 25 L. J., Ch. 221.

Compare *Re The London and Marine Assurance Co., e.p. Smith*, 17 W. R. 491 ; L. R., 4 Ch. 611, *post*, p. 123.

A person who has contracted to take shares at a future time, before which the winding-up is made, not contributory. Exceptions.

In June, 1864, certain reserved shares were offered to existing shareholders, to be paid for on the 1st October, and shares would be entitled to the dividend at the end of the year, if paid for before interest to be allowed. In July, shareholder agreed to take shares, paid for them in August, manager informed him that certificate would be given on 1st October ; before that time the bank stopped. Held (affirming V. C. Kindersley, Knight Bruce, L. J., dissenting),

(*a*) As to cases where companies have a right to veto a transfer, see *post*, par. **36** (4), p. 134.

(*b*) No alteration in the status of members is to take place after the commencement of a winding-up. C. A. 1862, ss. 131, 153.

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the contract was to take the shares *in præsenti*, and B. was liable. *Leeds Banking Co., e.p. Barrett*, 34 L. J. 558; 3 De G. & Sm. 30.

And if a person has contracted with a company which does not *bonâ fide* intend to carry on business, he will not be made a contributory. *Direct Exeter R. Co., Mathews' Case*, 3 De G. & Sm. 234.

Where person induced to take shares after the purposes of the company had practically stopped, was not made a contributory. *Universal Provident Life Assurance, Bell's Case*, 22 Beav. 35.

Liability of incomplete members.

(2) An inchoate member of an incorporated company can sue the complete members. *Fox* v. *Frith*, 1 Car. & M. 502.

A railway company cannot treat an assignee of scrip, whose name is not on the register of shareholders, as a member. *Midland Great Western R. of Ireland* v. *Gordon*, 16 M. & W. 804; 16 L. J., Ex. 166.

In an action for calls made before a person's name was entered in the sealed register of shareholders, under Companies Clauses Consolidation Act, the defendant was not liable. *Newry, &c. R. Co.* v. *Edmunds*, 17 L. J., Ex. 102; 2 Ex. 118.

On the construction of a private winding-up act it was held that, where it was necessary in order to become members that persons should execute a deed, a person who had not executed the deed ought not to be made a contributory. *Galvanized Iron Co.* v. *Westoby*, 8 Ex. 17; 21 L. J., Ex. 302.

Shares in a cost-book mining company passed by delivery of certificates, but no transferee was entitled to a dividend unless his name was entered in the share register book. A shareholder who had transferred his shares, but whose transferee was not registered, was made a contributory. *Wrysgan Slate Quarrying Co., e.p. Humby*, 28 L. J., Ch. 875.

Where shares passed by delivery of certificate, such new member ought to sign the book. Where the assignee had not signed, the assignor was made contributory. *Great Cambrian Mining Co., e.p. Bowen*, 27 L. T. 297.

Remedy, C. A., 1862, s. 34.

(3) A remedy is provided by notice or summons under the Companies Act, 1862, s. 35 (*a*).

Mandamus.

Notwithstanding that remedy, persons whose names are wrongfully omitted from or placed on the register of shareholders can compel the company by writ of mandamus to rectify the register. *Inns of Court Hotel Co., e.p. Rudolph*, 32 L. J., Q. B. 369, where a transferor compelled a company to register.

A company had registered the name of a transferee under a forged transfer. The legal owner obtained a writ of mandamus to compel the company to restore his name to the register; *Swan* v. *North British Australian Co.*, 32 L. J., Ex. 273; though the Court of Common Pleas had refused to make an order to the same effect under sect. 35. *North British Australian Co., e.p. Swan*, 30 L. J., C. P. 113.

In *Ward* v. *The South Eastern R. Co.*, 29 L. J., Q. B. 177, a man-

(*a*) *Mode of application in winding-up.*]—It was objected to an application under this section that a winding-up order having been made, it ought not to have been made on motion in court, but summons in chambers; but the objection was overruled. *Scottish Universal Finance Association, e.p. Buckridge*, 2 H. & M. 64; 13 W. R. 677.

damus was granted to compel a railway company to replace a person's name on the register.

By suit in equity.

Under the similar section of the Act of 1856 (19 & 20 Vict. c. 47, s. 25) there was no express power of deciding questions of title or other questions. V.C. Wood refused to apply that section where there was an important question to be tried. *British Sugar Refining Co., e.p. Faris*, 26 L. J., Ch. 369; 3 K. & J. 408. And the Court of Exchequer refused to rectify the register under that section, as there was an action for a call pending, and the register was not conclusive evidence of membership, and the action might be prejudiced. *Anglo-French Porcelain Co., e.p. Harris*, 29 L. J., Ex. 364; 5 H. & N. 809.

Where A. had executed transfers of shares in blank, leaving his broker to fill up the name of transferee and the description of the shares, the broker filled in the description of shares not those he was authorized to sell, and the transferee's name was placed on the register of shareholders. On bill by transferor, his name was replaced. *Tayler* v. *Great Indian Peninsular R. Co.*, 28 L. J., Ch. 709; 4 De G. & J. 559.

Stock was standing in the names of T. and B. B. executed and forged the signature of T. to a transfer of the stock; the transferee's name was placed on the register. T. died soon afterwards, and his personal representatives filed a bill to have the stock replaced. *Midland R. Co.* v. *Taylor*, 31 L. J., Ch. 336; affirming *Taylor* v. *Midland R. Co.*, 29 L. J., Ch. 731; 28 Beav. 287.

Under the Act of 1862, s. 35, the court has power to try questions of title; but notwithstanding where there is an equitable question of difficulty to be tried other relief is required, or it is necessary to bring other persons before the court, the proper mode of proceeding is by bill in equity.

An order was made on a bill in equity, that a company should remove the name of a person from the list of shareholders, and an injunction was granted to restrain them from reinstating his name. *Eustace* v. *Dublin Trunk R. Co.*, 16 W. R. 1110.

Where a broker, employed to purchase shares, had induced the vendor to execute a second transfer to himself and got his own name placed on the register and mortgaged the shares, the first transferee, on bill filed in equity, procured his own name to be placed on the register and the second transfer and mortgage to be cancelled. *Donaldson* v. *Gillot*, L. R., 3 Eq. 274.

A company had purported to forfeit shares for non-payment of calls. The shareholder filed a bill and obtained a declaration that the forfeiture was void, and the company was ordered to amend the register. *Sweeny* v. *Smith*, L. R., 7 Eq. 324; *Ashworth* v. *Bristol R. Co.*, 15 L. T. 561.

Other formalities must have been observed.

A person who has not got the legal interest vested in him cannot be put on the register, unless the company has recognized his title.

A bankrupt had a right to new shares on a small payment; the assignee was ignorant of this; after the discharge of the bankrupt a friend made the payment, and the shares were issued to the bankrupt; the assignee then purported to transfer the shares. A motion by the transferee to have his name placed on the register was refused. *Minerva Mining Co., e.p. Rymer*, 14 W. R. 276.

Persons who had taken informal transfers in companies governed

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by the Companies Clauses Consolidation Act, 1845, had no right to be put on the register. *R.* v. *General Cemetery Co.*, 25 L. J., Q. B. 342; 6 E. & B. 415; *Copeland* v. *North Eastern R. Co.*, 6 E. & B. 277.

The purposes of a company had practically ceased; money had been returned to the shareholders. A purchaser of shares, with knowledge of the facts, failed to obtain a writ of mandamus to compel the company to register him as shareholder. *Reg.* v. *Liverpool R. Co.*, 21 L. J., Q. B. 284.

C. A. 1862, Table A. (16), and C. A. 1856, Table B. (14), provide that the company may require evidence of title; under the latter it was held, that a company might require the certificates of shares to be left at the office for inspection by the board of directors, and need not be satisfied with mere production to a clerk. *Re East Wheal Martha Mining Co.*, 33 Beav. 119; 2 N. R. 543.

Where, though not necessary under the articles of association, it was the practice that transfers should be executed by the transferee as well as the transferor, the company were not bound to register a transfer executed only by the transferor. *Imperial Mercantile Credit Association, e.p. Marino*, 36 L. J., Ch. 469; L. R., 2 Eq. 226; 2 Ch. 596.

Specific relief.

When a person's name has been placed or kept on the register wrongfully, he is entitled to have it appear on the register that his name has been ordered to be struck out; therefore, it is not proper that his name should be erased with a knife, but it should be struck through with a pen, and a short note of the order made on the register. *Iron Ship Building Co.*, 34 Beav. 597.

So, where a person's name was wrongfully put on the register, and the company erased his name as having forfeited his shares, he was still entitled to apply under sect. 35. *Bank of Hindustan, China and Japan, e.p. Martin*, 2 H. & M. 669.

Where there was a doubt as to identity of person complaining with the person whose name was on the register, his name was removed from the list of contributories, but the register was not altered. *Southampton, &c. Steam Boat Co., e.p. Webb*, 9 Jur., N. S. 856.

In a case of doubt, *semble*, the Court of Chancery may direct a suit to be instituted for the purpose of determining the rights of the parties. *National and Provincial Marine Insurance Co., e.p. Parker*, L. R., 2 Ch. 685.

Where a person, moving to have his name removed from the register, alleged that the shares had been taken in his name by an unauthorized agent, the motion was directed to stand over to abide the result of an action at law. *South Kensington Hotel Co, e.p. Braginton*, 12 L. T., N. S. 259.

An order was made restraining a company from keeping a person's name on the register in respect of any share other than paid-up shares. *Ashworth* v. *Bristol R. Co.*, 15 L. T., N. S. 561.

Delay on part of company.

(4) Where the practice of a company in respect of registering transfers involved some delay, a transferor who remained on the register in consequence of such delay could not have his name removed from the register of shareholders or the list of contributories. *Joint Stock Discount Co., e.p. Shepherd*, L. R., 2 Ch. 16; 36 L. J., Ch. 32.

A transfer of shares was left at the office of a company for registration and approved by the director whose duty it was to do so on February 28, and would, according to the ordinary practice of the company, have been confirmed at the next meeting of the directors, which was held on March 1st, and then registered. No transfers could be registered after the 3rd of March. The transferor's name was removed from the register of shareholders and list of contributories, and the transferee's substituted. *Joint Stock Discount Co.*, *Nation's Case*, L. R., 3 Eq. 77; 36 L. J., Ch. 112.

It was the practice of a company that before registering the name of any transferee as shareholder, a director should weekly examine a book in which the transfers were entered, and seal new share certificates. Owing to non-attendance on previous occasions he was unable to examine the whole of the entries. Held, that the company were guilty of unnecessary delay, and that a transferor whose name might have been removed from the register but for such delay was entitled to have his name removed from the register of shareholders and list of contributories. *Joint Stock Discount Co.*, *e.p. Read*, 36 L. J., Ch. 472.

Where there was a power to refuse to register to an irresponsible person, and a transfer was made to an irresponsible person, but the company did not communicate any rejection of the transferee to the transferor; they might have done so on March 1st. On the 3rd they resolved to register no more transfers. The transferor was kept on the register. *Joint Stock Discount Co.*, *e.p. Shipman*, L. R., 5 Eq. 219; 37 L. J., Ch. 193.

Compare *Re North of England Banking Co.*, *e.p. Chatres*, 1 De G. & S. 581.

Where a petition was presented to wind up a company April 18, a resolution was passed May 2, duly confirmed May 18, to wind the company up voluntarily, and in November an order was made on the petition to continue the winding-up under the supervision of the court; a transfer had been lodged with the company on April 18; the court refused to rectify the register. *The Hydraulic Tube Drawing Co.*, *e.p. Bennett*, 16 W. R. 572.

Delay by transferor.

Where W. had sold shares to S., and executed a transfer to him, but S. had neglected to get it registered. H. had persuaded W. to execute a fresh transfer to him as having bought them from S. The company was wound up, and W. applied by summons to have his name removed from the register of shareholders and list of contributories. The court refused the motion. *London, Hamburgh, and Continental Exchange Bank*, *e.p. Ward*, L. R., 2 Ch. 431; 36 L. J., Ch. 462: reversing *S. C.*, L. R., 2 Eq. 226; 35 L. J., Ch. 652.

A shareholder in a company resisted an action for calls on the ground of alleged misrepresentations contained in the prospectus, and also brought an action against the promoters and directors to recover monies previously paid in respect of the shares: both actions were, with the sanction of the company, compromised; one term of the compromise being that the shares should be transferred to one of the directors. A transfer was accordingly executed and deposited with the attorney who acted for the company and directors in the actions, but no further steps were taken in the matter, and two years afterwards the company was ordered to be wound up. The court

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refused to remove the shareholder's name from the register or list of contributories. *Anglo-Danubian, &c. Co., e.p. Walker*, L. R., 6 Eq. 30; 37 L. J., Ch. 651.

But where a shareholder, who was in position to file a bill against the company to have his name removed from the register as having been induced by fraudulent representations to take the shares, wrote to the company declining to have anything further to do with it, and asked that his deposit might be returned, the deposit was returned, but his name was left on the register. Eighteen months afterwards the company was wound up. His name was removed from the list of contributories. *Canadian Native Oil Co., e.p. Fox*, L. R., 5 Eq. 118; 37 L. J., Ch. 257.

The transferor attended in chambers at the winding-up of a company, and objected to have his name placed on the list of contributories, but took no steps to have the name of the transferee substituted for his own on the register of shareholders under this section. In the meanwhile the transferee having died intestate, three years afterwards he applied to have the register rectified: Held, he was not precluded by delay. *Joint Stock Discount Co., e.p. Fyfe*, L. J Giffard, July 9th, 1869: reversing 17 W. R. 870.

Delay on the part of transferee.

In *The London, Hamburgh, and Continental Exchange Bank, e.p. Ward*, L. R., 2 Ch. 431; 36 L. J., Ch. 462, L. J. Turner thought the jurisdiction under this section was general, and not confined to cases where there had been default on the part of the company. L. J. Cairns thought otherwise. *Marino's Case* seems to bear out the latter view. V. C. Malins thought the section gave the court a general power to rectify the register. *Re Overend, Gurney & Co., Ward's Case*, 36 L. J., Ch. 416; L. R., 4 Eq. 189.

Where the transferees had neglected to leave the transfers with the company, the Master of the Rolls refused to rectify the register after a winding-up order had been made. *Contract Corp., Head's Case, White's Case*, 36 L. J., Ch. 121; L. R., 3 Eq. 84.

In *Re Overend, Gurney & Co., e.p. Musgrave*, L. R., 5 Eq. 195; 37 L. J., Ch. 161, the court refused to rectify the register where the transferee only had been in default. The case professed to be grounded on *Marino's Case, ante*.

In addition to the ordinary remedy a transferor has of compelling the transferee by a suit in equity to do all necessary acts to complete the transfer, see *post*, Ch. VII. The Companies Act, 1867, s. 26, attempts to provide a mode by which the transferor may be independent of the delay caused by the transferee.

Applications by liquidators.

(5) Where default had been made on the part of the company in registering a transfer of shares, the court refused to rectify the register on the application of the official liquidator. *Joint Stock Discount Co., Richell's Case*, 37 L. J., Ch. 373; 36 L. J., Ch. 814; L. R., 3 Ch. 119. In this case the transferee was a mere mortgagee whose debt had been paid off.

Where there was a question between the transferor and transferee, the court refused to rectify the register at the instance of the official liquidator. *General Floating Dock Co.*, 15 L. T., N. S. 526.

32. Persons have been held subject to the liabilities (1) or entitled to the rights (2) of members where they have been treated as such, and on the other hand the incidents of membership had in some instances ceased from acquiescence (3). Membership by acquiescence.

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(1) The holder of half shares issued *ultra vires* who had received dividends was estopped from denying the validity of the issue in an action for calls. *Hull Flax Co.* v. *Wellesley*, 5 H. & N. 38. Cases where persons have incurred liability by acting as members.

A subscriber to a railway company sold some of his shares to the defendant, but the forms prescribed by the act which incorporated the company were not complied with, but the defendant was registered as proprietor and paid two calls: Held, in an action by the company for the remaining calls on such shares, that he was precluded from disputing the validity of the transfer to him, notwithstanding that he had subsequently sold them. *Cheltenham R. Co.* v. *Daniel*, 2 Q. B. 281; 6 Jur. 577. See also *Birmingham and Bristol R. Co.* v. *Locke*, 1 Q. B. 256; *London and Grand Junction R. Co.* v. *Freeman*, 2 Man. & Gr. 606; *London and Grand Junction R. Co.* v. *Graham*, 1 Q. B. 271. A person who was on the register of shareholders, and had signed a proxy, was estopped from disputing his membership in an action for calls. *Sheffield R. Co.* v. *Woodcock*, 7 M. & W. 574.

A transferee under an informal transfer, who had been treated as a shareholder, was made a contributory. *Vale of Neath Brewery Co., e.p. Gordon*, 3 De G. & Sm. 249.

The purchaser of shares who had taken no transfer, but had received a certificate from the company, and had received dividends for three years, was made a contributory. *North of England Joint Stock Banking Co., e.p. Bernard*, 5 De G. & Sm. 283.

A person bought shares in a company registered under the Act of 1856, he was not entered on the list of shareholders but he received dividends; his executors were placed on the list of contributories. *Northumberland and Durham District Banking Co., e.p. Dixon's Executors*, 1 Dr. & Sm. 225.

The marriage settlement of a shareholder recited that shares had been transferred to trustees and declared trusts. The shares were not transferred, but the trustees were placed on the register of shareholders, and received dividends on the winding-up of the company: they were made contributories. *Phœnix Life Assurance Co., Hoare's Case*, 2 J. & H. 229; 31 L. J., Ch. 504.

The representatives of a person who had taken an informal transfer of shares and received dividends, were made contributories. *North of England Banking Co.*, 22 L. J., Ch. 194; 1 D. M. & G. 576.

An executor who had received dividends and sold the shares, neither his testator nor himself having been on the list of shareholders, was made a contributory. *Northumberland and Durham District Banking Co., e.p. Dixon's Executors*, 1 Dr. & Sm. 225.

A shareholder had executed a transfer in blank as to the description of the shares; the transfer was filled up and executed by the transferee, and lodged with the company for registration: though registration was not effected till after the commencement of the wind-

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ing-up of the company, the transferee was made a contributory. *Barned's Banking Co., e.p. Contract Corp.*, 36 L. J., Ch. 732; 37 L. J., Ch. 81; L. R., 3 Ch. 105.

The owner of several shares in a steam packet company transferred two of them to his son by a document which was not executed by the son, nor entered in the company's books, nor otherwise perfected according to the provision of the deed of constitution; the son was not aware of the transfer. By a rule of the company, every proprietor was always entitled to a free passage by the company's vessels, and the son on several occasions obtained certificates from the company's office that he was a proprietor, which entitled him to a free passage, and he also signed each certificate and the company's books in respect of these certificates as proprietor, and obtained a free passage, but he never received dividends, nor did any other act as proprietor. The son was made a contributory. *St. George's Steam Packet Co., Maguire's Case*, 3 De G. & Sm. 31.

One of the strongest cases on this subject, if it was decided on the ground of acquiescence, is *Re Littlehampton Steamship Co., e.p. Gregg*, 15 W. R. 82. There the directors had the power of allotting to applicants for shares either shares on which their membership would be completed by registration, or scrip certificates entitling the holder to take up his membership. An applicant was informed that he might have scrip certificates; he asked for them, but they were never given him; some time afterwards his name was inserted in the register of members in December, 1864. On the 22nd January, 1865, an order was made to wind up the company: his name was kept on the list of contributories.

Shares were issued by a company to C., who held them on behalf of B. An arrangement was entered into between the company C. and B., part of which was that the shares should be transferred to C. The name of C. was substituted in the share ledger for B., but not in the register of shareholders; there seems not to have been a transfer of the legal interest; and the whole arrangement was *ultra vires*, as under it the shares were to have been taken by the company. B. was made contributory. *Moseley Green Coal and Coke Co., e.p. Barrett*, 33 L. J., Ch. 617.

A transferee of shares under an invalid transfer had acted as shareholder; he had filled up a proxy which described him as a shareholder. He was placed on the list of contributories. *International Contract Corp., e.p. Sanger*, 18 L. T., N. S. 67.

Cases where they have not incurred liability by so acting.

C. the secretary of a company authorized A. to dispose of some shares. A. sold the shares to B. and executed a transfer to him. B. signed an acceptance of the shares at the office of the company, and obtained a transfer certificate signed by C. as secretary. C. afterwards gave A. notice that the shares were his, and, therefore, the transfer was inoperative. The shares became valueless, and C. then executed a transfer to a person who had general power of attorney for A. then abroad. B. was not liable to pay calls. *Bloxam* v. *Metropolitan Cab Co.*, 12 W. R. 736; 4 N. R. 51.

A testatrix, who held shares in a company, by her will gave her residuary estate, which included them, to A. B., whom she appointed executrix. The deed of settlement of the company provided that executory legatees should become shareholders, and receive dividends

only upon executing a deed making themselves personally liable. A. B. did not execute any deed. She received six dividends, for the first four of which she signed receipts as executrix. The company, without the knowledge of A. B., returned her name to the stamp office as a shareholder, and about four years after the death of the testatrix entered it on the dividend list in lieu of that of the testatrix. Upon the company being wound up she was made a contributory only in her representative character. *Herefordshire Banking Co., e.p. Bulmer*, 33 L. J., Ch. 609; 33 Beav. 438.

There was a provision in the deed of settlement of a company that executors should not receive dividends till they made themselves members. An executor, who had received dividends, was not made a contributory. *St. George's Steam Packet Co., e.p. Doyle*, 2 H. & Tw. 221.

A person who had agreed in writing to become a member of a marine insurance association, but had never received a stamp policy, notwithstanding that he had made a claim for damages to his ship and had paid contributions, was not made a contributory. *London Marine Insurance Association, e.p. Smith*, 17 W. R. 491; L. R., 4 Ch. 611.

Where the deed of settlement of a company required certain formalities before a legatee was made shareholder, and the name of the husband of a legatee was written in pencil in the register of shareholders, but subsequently dividends where paid to the executors, the executor was put on the list of contributories in his representative character. *Vale of Neath Brewery Co., Keene's Executors' Case*, 3 D. M. & G. 272; 22 L. J., Ch. 365.

The deed of settlement prescribed certain preliminaries which were to be observed for the purpose of making the husband of a female shareholder a proprietor in the company: Held, that a husband who had not complied with these requirements was liable in respect of losses incurred during the coverture only. *Vale of Neath Brewery Co., e.p. Kluht*, 3 De G. & Sm. 210; 19 L. J., Ch. 385. But query the authority of this case; see *post*, p. 127.

A person by allowing his name to remain on the list of contributories does not raise any equity against himself to be bound to contribute, as nobody can be injured by it. *Mexican and South American Co., Shewell's Case*, L. R., 2 Ch. 387; 36 L. J., Ch. 353.

Compare *London and Northern Assurance Corp., e.p. Stace*, 17 W. R. 751, *ante*, p. 85.

But in the winding-up of an abortive railway company under the Acts of 1848 and 1849, a person had submitted to be on the list of contributories in 1851, and afterwards, in 1854, applied to have his name removed; his motion was dismissed. *Eastern Counties Junction R. Co., Underwood's Case*, 5 D. M. & G. 577; 23 L. J., Ch. 943.

And where a person had failed to get off the list on account of misrepresentation, he afterwards tried to get off on account of mistake: though there was no proof of allotment, V.C. Malins refused to remove his name. *Land Shipping Colliery Co., e.p. Jones*, 17 W. R. 983.

Register of shareholders is not conclusive.

The register of shareholders is not conclusive evidence that the persons whose names are on it are members (C. A. 1852, s. 37). See *Reese River Silver Mining Co.* v. *Smith*, L. R., 4 E. & I. 64.

It was held that a person whose name was on the register of

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shareholders of a railway company was not obliged to take steps to take it off in order to defend action for call. *Waterford R. Co.* v. *Pidcock*, 8 Ex. 283; 22 L. J., Ex. 146.

A director is not affected with notice of his name being placed on the register of shareholders, so as to be made a contributory. *Universal Banking Co., Bartlett's Case*, 17 W. R. 131.

A person whose shares are forfeited, but whose name remains on the register, is not not liable to contribute in the winding-up of the company. *Tavistock Ironworks Co., Lyster's Case*, L. R., 4 Eq. 233; 36 L. J., Ch. 616.

A person applied for shares in a company, but as they were not allotted to him within a reasonable time, he refused to take them; his name was, however, kept on the register till the winding-up of the company: Held, that he was not bound to take active steps to remove his name from the register, and his name was removed on motion under sect. 35. *Brown, Baily & Co., e.p. Baily*, L. R., 3 Ch. 592; 5 Eq. 428; 37 L. J., Ch. 255, 670.

So where a conditional application for shares was made, and the allotment was made without the conditions being complied with. *Richmond Hill Hotel Co., e.p. Pellatt*, L. R., 2 Ch. 527; 36 L. J., Ch. 613. Also where the applicant withdrew his application before allotment. *National Savings Bank Association, e.p. Hebb*, L. R., 4 Eq. 9; 36 L. J., Ch. 748.

A person whose name had been put on the register in respect of shares for which he had not applied, in April, 1867, informed the directors of the fact, and asked them to remove his name, which was not done. Calls were made on him from time to time down to October, 1868, which he did not pay and for which he was not sued. In February, 1869, he moved, under sect. 35, to have the register rectified: Held, that he was not too late in asserting his right to have his name removed. *Cheltenham Railway Carriage Co., e.p. Little*, 17 W. R. 461.

And in the same way, where shareholders are liable to the creditors of the company, the mere fact of persons' names being on the register of shareholders will not render them liable to be sued on a writ of *sci. fa. Edwards* v. *Kilkenny R. Co.*, 14 C. B., N. S. 526; *Moss* v. *Steam Gondola Co.*, 17 C. B. 180; *Bailey* v. *Universal Provident Life Assurance Co.*, 1 C. B., N. S. 557.

Cases where persons have acquired rights by being treated as members.

(2) Where an informal transfer was made to a company which had power to take shares, the company could not impeach the transaction. *Taylor* v. *Hughes*, 2 J. & Lat. 24.

Where there had been a defect in the form of transfer the official liquidator could not get the name of the transferor placed on the list of contributories. *Re General Floating Dock Co.*, 15 L. T., N. S. 526.

An assignee of shares whose title has been recognized by the company, though not yet registered as member, is complete shareholder to the extent of being able to sue the company without making the transferor a party. *Bagshaw* v. *The Eastern Union R. Co.*, 7 Hare, 114.

A railway company could not remove a person who had an equitable title to shares from the register in favour of some one who had no title. *Ward* v. *South Eastern R. Co.*, 29 L. J., Q. B. 177.

Compare *Hare* v. *London and North Western R. Co.*, John. 722, *post*, p. 139.

(3) Where a company had a right of pre-emption of shares, an informality consequent on the company's neglect to keep the proper books, having prevented proper entries being made, could not make a person from whom the company had taken shares liable to contribute. *Northern Coal Mining Co., e.p. Bagge*, 13 Beav. 162. Cases where rights or liabilities of members have ceased.

A creditor of an incorporated company was restrained from proceeding at law against a person the company had treated as no longer a shareholder. *Taylor* v. *Hughes*, 1 J. & Lat. 24.

Where a member of a mining company had allowed his shares to be treated as forfeited for many years, he was not allowed to assert his right on the affairs of the company becoming prosperous. *Prendergast* v. *Turton*, 13 L. J., Ch. 268; 1 Y. & C., C. C. 98; 8 Jur. 207.

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33. As infants are unable to bind themselves by contract, where an infant has been made a member of a company within a reasonable time after coming of age he may repudiate his shares, and he is not liable to pay calls or contribute in the winding-up of the company until after coming of age he has accepted his membership (1); the liability remaining with the transferor, unless the company have done some act acquiescing in relieving him from it (2). The husband of a member is entitled to the dividends as a *chose in action* belonging to his wife (3); he is liable to pay calls as being debts due from her (4), and he is expressly made liable to contribute in the winding-up of the company (5). (C. A. 1862, s. 78.) Membership of persons under disability.

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(1) A plea that the defendant was an infant at the time he took the shares, and had repudiated them during infancy, was good. *Newry R. Co.* v. *Combe*, 18 L. J., Ex. 325; 3 Ex. 565. Infant's liability.

A plea to an action for calls that the defendant was an infant at the time he contracted to take the shares was bad, as it did not aver that he had repudiated the shares within a reasonable time after coming of age. *Dublin R. Co.* v. *Black*, 22 L. J., Ex. 94; 8 Ex. 181. See also *London and North Western R. Co.* v. *M'Michael*, 20 L. J., Ex. 97; 5 Ex. 114, 121.

In *The Birkenhead R. Co.* v. *Pilcher*, *Ib.*, there was also an averment that the defendant had received no benefit, but it was said, "that to make such plea good, where there is no disclaimer averred, it ought to appear that the infant is not yet of age."

Defendant to an action for calls pleaded infancy at the time the calls were made; the plea was bad. *Cork and Bandon R. Co.* v. *Cazenove*, 10 Q. B. 935; *Leeds and Thirsk R. Co.* v. *Fearnley*, 18 L. J., Ex. 330; 4 Ex. 26.

An infant shareholder attained her majority six months after the commencement of the winding-up of the company and was after due notice settled on the list of contributories, when a balance order What amounts to acceptance of shares.

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was made against her more than a year after her being settled on the list and three years after her attaining majority. She took out a summons, and had her name removed from the list of contributories. *Re Alexandra Park Co., Hart's Case*, 6 Eq. 512.

Shares had been sold to and registered in the name of D., an infant. The company was ordered to be wound up, and D. was made a contributory. D. afterwards attained twenty-one, and for upwards of seven months took no steps. He was served with a balance order. He then took out a summons to have the name of the purchaser substituted for his own. An order was granted to that effect, but without costs. *Barned's Banking Co., e.p. Delmar*, 17 W. R. 21.

An infant transferee after he came of age allowed his name to be used together with other shareholders in an attempt to be struck off the list of contributories on the ground of misrepresentation. This did not amount to acquiescence so as to preclude him from afterwards applying to be struck off on the ground of infancy. *Commercial Banking Corporation of India, &c., e.p. Wilson*, 17 W. R. 979.

S. transferred shares to F., in whose name they were registered. F. was an infant, but neither S. nor the company were aware of that fact. More than a year afterwards the company was ordered to be wound up, and nearly two years after that F. attained his majority. F. was settled on the list of contributories, but he took no step to repudiate his liability until a balance order was served on him ten months afterwards. The name of F. was removed, and the names of the executors of S. substituted. *Financial Corporation, Sassoon's Case*, 20 L. T. 424.

Where a company had sued an infant for calls and infancy had been pleaded; two and a half years after the company was wound up; the official liquidator was precluded from having the name of the transferor substituted by this delay. *European Central R. Co., Parson's Case*, V. C. J., 21st July, 1869.

It was questioned whether the liability of the transferee ceased on his transferring to a minor with the knowledge of the company. *St. George Steam Packet Co., Litchfield's Case*, 3 De G. & S. 141. In that case, though the deed of settlement provided that infants were to vote by their guardians (*a*), a father who had transferred shares to his infant son was made a contributory.

Transferor's liability.

(2) Where at date of winding-up transferee was under age, he paid calls, but became unable to pay further calls, the liquidator was entitled to have the transferor put on the list. *Ottoman Financial Association, Cheetham's Case*, V. C. S., July 16th, 1869.

The name of a transferor of shares to an infant was put on the list of contributories on summons taken out by the liquidator. The infant had been married. *Imperial Mercantile Credit Association, Edward's Case*, V. C. J., July 21st, 1869.

Shares had been purchased by father in name of his child; the court would not order the father's name to be placed on the register. *Ib.*

(*a*) There is a similar provision in Table B. (39) of "The Companies Act, 1856." The articles of association of companies should provide against having infant members.

Where C. had transferred shares to an infant who had parted with all but ten at the time of winding-up, C. was put on the list of contributories with respect to the ten shares. *Imperial Mercantile Credit Association, Curtis's Case*, L. R., 6 Eq. 455 ; 37 L. J., Ch. 692.

S., having bought in the market shares belonging to C., gave the name of A. as transferee ; the shares were transferred to A., who was an infant. C. was made a contributory. *China Steam Ship and Labuan Coal Co., e.p. Capper*, L. R., 3 Ch. 458. *Joint Stock Discount Co., Mann's Case*, 3 Ch. 459 (n), and *Electric Telegraph Co. of Ireland, Reid's Case*, 24 Beav. 318, are similar cases.

(3) As to the nature of dividends, see *post*, p. 142.

Dividends of married women.

When shares are registered in name of married woman, if she sue for dividends the nonjoinder of her husband is only the subject of a plea in abatement. *Dalton* v. *Midland Counties R. Co.*, 22 L. J., C. P. 177 ; 13 C. B. 474.

(4) As to the nature of calls, see *post*, p. 143.

Liability of husband.

(5) Under the Act of 1848, the husband of a female shareholder was placed on the list of contributories. *North of England Banking Co., Burlinson's Case*, 1 De G. & Sm. 18 ; *Sadler's Case*, *Ib.* 36.

A woman was, before her marriage, the registered proprietor of shares in a banking company. Upon her marriage a settlement was executed, by which the shares were assigned to trustees upon trusts for her separate use ; but the trustees did not accept the trusts, and the shares continued to be registered in her former name. The company was afterwards registered under the Joint Stock Banking Companies Act, 1857, and wound up under the Joint Stock Companies Acts of 1856, 1857 : it was held, that the name of the husband, in right of his wife, must be placed on the list of contributories as well as that of his wife. *Re Northumberland and Durham District Banking Co., e.p. Luard*, 1 D. F. & J. 533 ; 29 L. J., Ch. 269, overruling *North of England Banking Co., e.p. Angas*, 1 De G. & Sm. 566, where the name of a person whose wife held shares bought with her separate property was removed from the list of contributories.

Separate estate.

Where a married woman having separate estate contracted to take shares in her own name, on the company's being wound up, she was placed on the list of contributories in her own right so as to bind her separate estate. *Leeds Banking Co., Mathewman's Case*, 3 Eq. 789 ; 36 L. J., Ch. 90.

A married woman took shares though she had no separate estate, she was afterwards divorced : she was kept on the list of contributories. *Friend-in-Need Assurance Co.*, V. C. Stuart, 23rd July, 1867.

Bankruptcy of members.

34. On the bankruptcy of a shareholder, calls already made by a company are provable against his estate. But calls made after that time are not provable. And the bankrupt is liable for all calls made after that time, till the shares are vested in

Par. **34.** some one else (1) (*a*). If, however, the company is in liquidation at the time of his bankruptcy, the estimated amount of future calls may be proved (*b*).

Liability of bankrupts.

(1) In the *General Discount Co.* v. *Stokes*, 35 L. J., C. P. 25; 17 C. B., N. S. 765; 5 N. R. 134, a shareholder was sued for calls made after his bankruptcy, but before he obtained his discharge, such calls not being proveable in bankruptcy. This company was being wound up under the Acts of 1856, 1857.

Compare *Monmouthshire Banking Co., e.p. Nicholas*, 21 L. J., B. 64; 2 D. M. & G. 271; *post*, C. A. 1862, s. 77, n.

In *Martin's Patent Anchor Co.* v. *Morton*, L. R., 5 Q. B. 306; 37 L. J., Q. B. 98, a shareholder who had become bankrupt and obtained his discharge was sued for calls. So in the case of a railway company. *South Staffordshire R. Co.* v. *Burnside*, 20 L. J., Ex. 120; 5 Ex. 129.

In *The General Estates Co., e.p. Hastie*, 38 L. J., Ch. 43, 233; L. R., 7 Eq. 3; 4 Ch. 274, a shareholder in the same position was put on the list of contributories; this applies also to cases where the property of a shareholder has been assigned for the benefit of his creditors. *Anglo-Greek Steam Navigation Co., e.p. Carralli*, L. R., 4 Ch. 174.

Where a shareholder had executed a composition deed under the Bankruptcy Act, 1861, s. 192, just before the company was wound up, then owing two calls which were omitted from the schedule to the deed by mistake, he was liable for calls made in the winding-up, but not the previous calls. *Richmond Hill Hotel Co., e.p. King*, L. R., 4 Eq. 566; 3 Ch. 10; 36 L. J., Ch. 718.

Unregistered companies.

On the winding-up of an abortive railway company, a discharged bankrupt, who had made himself liable to contribute to the preliminary expenses, was not made a contributory. *Warwick and Worcester R. Co., Parbury's Case*, 30 L. J., Ch. 512.

In the case of an unregistered company, where the assignees had repudiated the shares of a bankrupt, it was held that the bankruptcy dissolved his connection with the partnership, and the bankrupt's name was removed, though he had obtained his certificate. *Liverpool Marine Insurance Co., e.p. Greenshields*, 5 De G. & Sm. 599; 21 L. J., Ch. 773.

L., a shareholder, executed an inspectorship deed under the Bankruptcy Act, 1861, by which his property was assigned to trustees before the assets were distributed; the company was wound up voluntarily and a call made. L. was liable to pay the call. *Financial Corporation* v. *Lawrence*, 17 W. R. 854.

Companies registered under C. A. 1844.

A bankrupt shareholder in a company registered under the Act of 1844, who had obtained his certificate, was not made a contributory on the winding-up of the company, as the liabilities of the company had been incurred before his obtaining the certificate. *Merchant Traders' Insurance Co., Chapple's Case*, 4 De G. & Sm. 400.

By the deed of settlement of a registered joint stock company it was stipulated that no assignees of bankrupts should be entitled to become shareholders, but they should be entitled to sell the shares,

(*a*) As to the transfer of shares under bankruptcy, see *post*, par. **39.**
(*b*) See C. A. 1862, ss. 75, 77.

and a general power was given to the directors to make calls on shareholders other than the bankrupt shareholders. It was held that the bankruptcy of a shareholder was an answer to an action for calls made after his certificate of discharge, though the assignees had not dealt with the shares. *Wylan Steam Fuel Co.* v. *Street*, 10 Ex. 849; 24 L. J., Ex. 208.

Proof by agents.

All public companies incorporated or authorized to sue or bring actions, either by charter or act of parliament, may prove by an agent, provided such agent shall in his declaration declare that he is such agent, and that he is authorized to make such proof. (24 & 25 Vict. c. 134, s. 144).

Effect of fraud.

35. Though a shareholder may transfer his shares out and out for the sake of getting rid of his liability (*post*, par. 36 (4), p. 133), he cannot escape his liability by transferring to a person he secretly intends (*a*) to be a trustee for himself (1). And where transfers are otherwise tainted with fraud on the company, the transferors remain subject to the liability of membership (2).

Secret trusts.

(1) J. C. took 300 shares in a company, and in order to increase the apparent number of shareholders, and thereby cause the company to be more favourably regarded in the share market, caused 100 to be placed in the name of A. and 100 in the name of B. J. C. was made contributory in respect of the whole number of shares. *Wheal Emily Mining Co., e.p. Cox*, 33 L. J., Ch. 145.

A shareholder transferred his shares to a person of no means, paying him a consideration and agreeing to indemnify him. V. C. Wood held, that he could not thus get rid of his liability. *Phœnix Life Assurance Co., e.p. Hatton*, 31 L. J., Ch. 340.

Where a shareholder transferred shares to his servant to get rid of his liability, the relationship of master and servant seems to have been a chief ground for considering that the transaction was not genuine. *Electric Telegraph Co. of Ireland, e.p. Budd*, 31 L. J., Ch. 4.

Where shares transferable by delivery of certificates were professedly sold through a broker to a servant of the vendor, but the purchase-money was provided out of funds of the master, the vendor was made contributory as he had not proved that he had actually parted with all interest in the shares. *Mexican and South American Co., e.p. Hyam*, 29 L. J., Ch. 243; 1 D. F. & J. 75.

A shareholder sold shares to his father, a man in needy circumstances, for a price below the market value; the vendor was made a contributory. *The Mexican and South American Co., e.p. Costello*, 30 L. J., Ch. 113.

(*a*) *Conflict of authorities.*]—Great difficulty arises in the cases on this subject in determining as a matter of fact whether the transaction is *bonâ fide*, and consequently the cases seem contradictory. Compare with cases in note (1), *De Pass's*, and other cases, *post*, p. 134.

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Where a person sold shares to his servant for a nominal consideration to relieve himself from liability, the Master of the Rolls held him liable to contribute as the transaction was not *bonâ fide*. *Mexican and South American Co., e.p. Lund*, 27 Beav. 465; 28 L. J., Ch. 628. It is difficult to reconcile this with some of the other cases (*infra*, p. 134), as the judge does not seem to have come to the conclusion that any beneficial interest was retained by the vendor.

In *Esgair Trewyn Mining Co., Alexander's Case*, 9 W. R. 410, a person who had transferred to a solicitor's clerk for a nominal consideration was made a contributory.

Where the transferor had been paid over dividends after the transfer, he was made a contributory. *Athenæum Assurance Society, Chinnock's Case*, John. 714.

S. sold shares to get rid of his liability; they were transferred to a trustee for the purchaser to secure S. the purchase-money which was left unpaid. S. was made a contributory. *Re Tipperary Bank, e.p. Scully*, 6 Ir. Ch. Rep. 72.

Compare *De Pass's Case, post*, p. 134.

A person who was precluded by the regulations of an unincorporated company from holding shares, but secretly obtained them by using the name of another person, could not maintain an action against another shareholder for disbursements made for the benefit of the undertaking during the time such shares were held. *Goddard* v. *Hodges*, 2 L. J., Ex. 20; 1 Cr. & Mee. 33.

Cost-book mining companies.

A transfer of shares in a cost-book mining company for the purpose of getting rid of liability for a nominal consideration, or to a person without any apparent ability to pay the expenses of working a mine, or to a person in the menial or domestic service of the transferor, is to be deemed fraudulent. (32 & 33 Vict. c. 19, s. 35.)

Transfers under fraudulent arrangements.

(2) Where one director transferred his shares to another for a valuable consideration, the shares being worthless; the transferee having been guilty of fraud, which the transferor was aware of; the court thought that the object of taking the transfer was to keep the transferor from disclosing the fraud, and the transferor was made a contributory. *Tipperary Banking Co., e.p. Kennedy*, 6 Ir. Ch. Rep. 121.

A person who had transferred his shares to a nominee of the directors, as part of an arrangement to stifle inquiry, was made a contributory. *Mitre Assurance Co., e.p. Eyre*, 31 L. J., Ch. 640; *Consols Insurance Co., e.p. Benham*, 11 Jur., N. S. 318; 13 W. R. 483.

Where directors transferred their shares as part of a scheme for retiring from the direction, they were made contributories. *Universal Provident Life Insurance Co., Munt's Case*, 22 Beav. 55.

Where there were disputes among the shareholders, shares of many of the shareholders were transferred to two of the directors as part of an arrangement to settle the disputes. Transfers were to be made only under the sanction of the directors. It was held, that the directors, knowing the circumstances, had not fairly exercised their discretion in not vetoing the transfers, and the transferors were made contributories. *Cameron's Coalbrook Co., Bennett's Case*, 5 D. M. & G. 284; 24 L. J., Ch. 130.

Where directors entered into an arrangement *ultra vires* with S. an actuary for the purpose of carrying on business more prosperously, a director who disapproved of these acts transferred his

shares to a nominee of S., to whom he paid money to take them off his hands; he was not liable to contribute. L. J. Turner said, "I think the fair result of the evidence is, that the transfer of these shares did not induce the arrangement, but that the arrangement induced the transfer, and therefore that the breach of duty, assuming there was one, was not the result of the transfer. *London and County Assurance Co., e.p. Jessop*, 2 De G. & J. 638; 27 L. J., Ch. 757.

A director who had transferred shares to a person who already held the full complement allowed by the rules of the company was made a contributory. *Newcastle Marine Insurance Co., e.p. Brown*, 19 Beav. 97.

Transfers to trustees for companies.

A holder of shares in an unincorporated company sold them to a director of the company; the solicitor of the vendor who conducted the sale knew the director was in reality buying the shares for the company. The vendor was made a contributory. *Vale of Neath and South Wales Brewery Co., e.p. Richmond's Executors*, 3 De G. & Sm. 96. See also *Morgan's Case*, 1 M. & G. 225; *Lawe's Case*, 1 D. M. & G. 421, in the same company.

A person who held shares in trust for the company, which had no power to hold shares, transferred them to the manager and his successors in office. The transferor was made a contributory. *Marylebone Banking Co., e.p. Davidson*, 3 De G. & Sm. 21.

Where a transfer was made to a director by way of mortgage to the company, the transferor was made a contributory. *Re The General Provident Assurance Co., Cross's Case*, 17 W. R. 1006.

Compare *Vale of Neath Brewery Co., e.p. Hellway*, *post*, p. 132.

Transfers otherwise tainted with fraud.

The articles of association of a company provided that transfers should not be registered until all calls should be paid. At a meeting of the board of directors the propriety of making a call was discussed. A shareholder present induced the directors to postpone the consideration of the matter, and in the meantime transferred his shares to a pauper. The directors declined to register the transferee and the court refused to compel the company to do so. *National and Provincial Marine Insurance Co., e.p. Parker*, L. R., 2 Ch. 685.

Status of members.

36. A member of an incorporated company is in the position of a stranger to the company (1); his status is not affected by the character of the corporation of which he is a member (2), there being no fiduciary relationship between the company and himself, his right to be a member is a matter of strict law (3); and no personal confidence being placed in him, he may transfer his interest and liability to a substitute (4), but he cannot withdraw without substituting another in his place (5).

Members are in the position of strangers.

(1) The relationship between members of companies governed by the Act of 1862 and their companies is more close than that between other corporations and their members. In addition to their being bound to contribute to the capital to the extent provided by their

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memorandum and articles of association, and the fact of creditors having a kind of right to trust to the register of shareholders (*ante*, p. 66), in the case of the company being wound up the right of the company can be enforced against its members in a summary manner (C. A. 1862, s. 101), and the debts due to members as such are postponed to those due to strangers. C. A. 1862, s. 38 (7).

A shareholder may vote at meetings in respect of matters in which he is interested. *Exeter and Crediton R. Co.* v. *Buller*, 5 R. C. 211.

It was so held even where it was endeavoured to get a meeting to take steps to set aside a contract under which one of the shareholders held shares, and his votes turned the scale in favour of adopting the contract. *Atwood* v. *Merryweather*, 37 L. J., Ch. 35; L. R., 5 Eq. 468 (n.); *East Pant Du Mining Co.* v. *Merryweather*, 5 N. R. 166.

In respect of entries in books over which members of a company incorporated by act of Parliament had a statutory power of inspection, C. J. Denman said, "A proprietor entering into a contract with a company must be deemed a stranger, and can be affected with no entry made under orders from the entire body." *Hill* v. *Manchester and Salford Waterworks Co.*, 5 B. & Ad. 875.

A shareholder selling shares was not affected with notice that his transferee, a director, was buying shares on behalf of his company. *Vale of Neath, &c. Brewery Co., e.p. Hellway*, 1 De G. & Sm. 177.

Where a public company is party to an action, the mere fact that one of the jurymen was a shareholder in the company is no ground for granting a new trial. *Williams* v. *Great Western R. Co.*, 3 H. & N. 869; 28 L. J., Ex. 2.

Legal proceedings,

"A member of a corporation is for this purpose" (that of suing on a contract) "as distinct from a corporate body as any third person." *Per* Parke, J., *Dunston* v. *Imperial Gaslight Co.*, 5 B. & Ad. 875.

in case of unincorporated companies.

One of the greatest difficulties unincorporated companies had to contend against was, that they had no means of enforcing calls from their members except through the clumsy device of setting a creditor to sue the defaulting member. It was, in some cases, attempted to make calls a debt due to an officer or trustee for the company for the time being, but all such attempts failed (*a*).

One of the rules of a cost-book mining company was, that calls should be a debt due to the purser of the company. An action by the purser would not lie for calls. *Hybart* v. *Parker*, 4 C. B., N. S. 209; 27 L. J., C. P. 120. See also *Hall* v. *Bainbridge*, 1 Man. & Gr. 42, *ante*, p. 22; *Badenham* v. *Bates*, 3 Bing. 470.

In some cases the shareholders have covenanted with individual trustees to pay calls. That contrivance was partially successful, but was inconvenient on account of the necessary changes in the trustees.

Actions by trustees.

The members of a large partnership mutually covenanted with each other to do certain things under certain penalties to be paid as liquidated damages to R. one of the partners, who was to sue for the same; and it was declared that every penalty should be divided amongst all the partners except the person liable to the penalty. An action was successfully brought upon it. *Radenhurst* v. *Bates*, 3 Bing. 463.

(*a*) As to companies enabled by statute to sue by a public officer, see *post*, 7 Geo. 4, c. 46.

For actions for calls by trustees with whom the shareholders have covenanted by their deed of settlement, see *Hutt* v. *Giles*, 12 M. & W. 492; 18 L. J., Ex. 337; *London and Continental Assurance Co.* v. *Redgrave*, 4 C. B., N. S. 524; *Wilson* v. *Wilson*, 6 Scott, 540.

Character not affected by membership.

(2) A member of or subscriber to any incorporated, commercial or trading company established by charter or act of parliament shall not be deemed as such a trader liable to become bankrupt. 12 & 13 Vict. c. 106, s. 65. This was so independently of statute. *Ex p. Ball*, 15 Ves. 357.

Unincorporated companies.

It is otherwise with respect to unregistered companies, which are merely large partnerships. *Re Puttock, ex p. Browne*, 2 M. D. & D. 758.

A farmer who held two small shares in a bank was held to be a trader within the meaning of the bankrupt laws. *Smith* v. *Cannan*, 2 El. & Bl. 35; 22 L. J., Q. B. 290.

A person who had held shares and received dividends for two years was held to be a trader. *Ex p. Wyndham*, 1 M. D. & D. 146.

But the taking of shares for the express purpose of making himself a trader, and obtaining the benefit of the bankrupt law, with no *bonâ fide* intention of carrying on the business of a banker, is not trading. *Ex p. Brundrett*, 2 Dea. 219; 3 M. & A. 50.

Questions relating to forfeiture are strictly legal.

(3) Where there was a power of forfeiture qualified by a proviso that it was not to be exercised without giving thirty days' notice, though the power was exercised without proper notice being given, the forfeiture was valid. *Cockerell* v. *Van Diemen's Land Co.*, 2 Jur. 977; 18 C. B. 454. However, in another case, where there was a proviso that no advantage should be taken of a forfeiture unless the shares should be declared forfeited at a general meeting, it was held necessary, in a plea of forfeiture to an action for calls, to show that the shares were forfeited at some general meeting. *Edinburgh, &c. R. Co.* v. *Hibblewhite*, 6 M. & W. 707, admitted to be good law in *London and Birmingham R. Co.* v. *Fairclough*, 2 M. & Gr. 674. See also *Naylor* v. *South Devon R. Co.*, 1 De G. & Sm. 32; 11 Jur. 31.

Where shares have been legally forfeited, but improperly, an action for damages will lie against the company. *Cockerell* v. *Van Diemen's Land Co.*, 2 Jur. 977; 18 C. B. 454; *Catchpole* v. *Ambergate R. Co.*, 22 L. J., Q. B. 35.

Equity will not relieve against a forfeiture.

The court of Chancery refused relief against a forfeiture under a bye-law of incorporated company, though the forfeiture was incurred from ignorance and accident. *Sparkes* v. *Liverpool Waterworks Co.*, 13 Ves. 428.

A motion to restrain a company forfeiting shares for non-payment of calls was refused. *Logan* v. *Earl Courtoun*, 13 Beav. 22; 20 L. J., Ch. 347.

So where there was an option given to take new shares, a shareholder, who had not been able to exercise his option through residence abroad within the proper time, had no right to have the time extended. *Pearson* v. *London and Croydon R. Co.*, 14 L. J., Ch. 412; 14 Sim. 541.

In further illustration of this, as to questions relating to the liability of members to pay calls, see *post*, **38** (1); as to questions relating to their right to receive dividends, see *post*, **37** (3).

Right to transfer shares.

(4) P. sold shares transferable by delivery to his clerk, and received 1*l.* for them. It was admitted that the sale was made by P.

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in order to get rid of his liability. As it was thought the shares were parted with out and out, P. was not made a contributory; but as the transaction required strict investigation, no costs were given to P. *Mexican and South American Co., De Pass's Case*, 4 De G. & J. 544.

A transfer stated a consideration from the transferee to the transferor. A consideration in reality passed to the transferee. The transferor was not made a contributory. *Hafod Lead Mining Co., Slater's Case*, 35 L. J., Ch. 304. See also *Home Counties Life Assurance Co., e.p. Gurstin*, 10 W. R. 457; *Imperial Mercantile Credit Association, Wilkinson's Case*, July, 1869. Compare cases *ante*, p. 129.

Where a transfer, said to be on a secret trust, had been made many years before, the court refused to allow the official manager to contest the validity of the transfer until he had laid sufficient grounds before the court. *Cameron's Coalbrook Co., Hunt's Case*, 32 Beav. 387.

Where it was provided that transferors should be liable for losses which had happened at the time of transfer, this was held to mean only losses appearing in the balance sheet, so that a transferor was not liable to contribute, a balance sheet having been issued falsely showing that there were no losses. *North of England Banking Co., e.p. Holme*, 22 L. J., Ch. 226; 2 D. M. & G. 113.

Directors have no discretionary power independently of powers expressly given them by the articles of association to refuse to register a transfer which has been *bonâ fide* made; therefore, where a transferee gave an address at which he was only an occasional visitor, it was held that the directors were bound to register the transfer, although the company was at the time in difficulties and the shares were sold by the transferor in order to get rid of responsibility. *Re Smith, Knight & Co., Weston's Case*, L. R., 4 Ch. 20; 38 L. J., Ch. 49, overruling 37 L. J., Ch. 559.

Unincorporated companies.

In unincorporated companies a shareholder has generally a right to substitute another in his place. This is one of the principal points of difference between such companies and ordinary partnerships.

A transferee of shares in a banking company, under 7 Geo. 4, c. 46, in the absence of any provision to the contrary, was made a contributory in respect of debts incurred before the transfer as well as after. *Monmouthshire Banking Co., e.p. Cape's Executors*, 2 D. M. & G. 562.

A transferee becomes liable to contribute even to the debts due to his transferor. *Taylor* v. *Ilfil*, 1 N. R. 566.

The fact that a mode of transfer is provided, shows that it is intended that the transferee should take the place of the transferor. *Pennant Mining Co., Mayhew's Case*, 5 D. M. &. G. 837.

Exceptions.

No change, however, can take place in the members of a company after the commencement of its being wound up (C. A. 1862, ss. 131, 153), unless a previous change would have taken place but for the default of the company. *Ante*, par. 31 (4), p. 118; also *post*, C. A. 1862, s. 35.

And where a company is in insolvent circumstances, and it is necessary that it should be wound up, the directors may pass and carry out a resolution that no transfers are to be registered in future. *Joint Stock Discount Company, e.p. Shepherd*, 36 L. J., Ch. 32; L. R., 2 Ch. 16.

Where a transfer had been delivered to a broker, who did not disclose the name of his principal, and afterwards gave the name of a man of straw as transferee, the court refused to strike the name of the transferee off till a proper substitute was disclosed. *London and Hamburg Bank, Watkin's Case*, 14 W. R. 817.

Company's lien and powers of vetoing transfers.

It is common for articles of association to provide either that the company has a lien on shares for debts due to the company, or that the company may decline to register transfers made by a member indebted to them. [See Table A. (10) of C. A. 1862, Table B. (7) of C. A. 1856.] And sometimes there are general powers to veto transfers.

Such powers must not be exercised capriciously; *Robinson* v. *Chartered Bank of India*, 35 Beav. 79; see also *ante*, par. 21; also *Bennett's Case*, *ante*, p. 130.

The Companies Clauses Consolidation Act, 1845, enacts, that no shareholder shall be entitled to transfer his shares, &c., "until he shall have paid all calls for the time being due on every share held by him." This did not prevent the transfer of stock held by a shareholder who owed calls on shares. *Hubbersty* v. *Manchester, Sheffield, &c. R. Co.*, 36 L. J., Q. B. 33, 198; L. R., 2 Q. B. 59, 471.

A resolution passed that a call should be made was held to make a call due within the meaning of that act. *E. p. Tooke*, 18 L. J., Q. B. 343; *Reg.* v. *Londonderry R. Co.*, 13 Q. B. 998.

But under C. A. 1844 (7 & 8 Vict. c. 110), s. 54, a call made but not due did not prevent a transfer being made. *British Provident Life and Fire Assurance Society, Re Orpen*, 33 L. J., Ch. 67.

A company, who had power to refuse to register transfers while calls were due, refused to do so a call being due. The transferor paid the calls, but in the meanwhile another call was made. It was held they were bound to register the transfer. *Reg.* v. *Inns of Court Hotel Co., e. p. Rudolph*, 32 L. J., Q. B. 369.

A company had power to refuse to register transfers from persons indebted to them. A transferor of shares in that company sent the amount of calls then due to the transferee to pay them. The transferee tendered to the secretary of the company overdue interest warrants in respect of debentures issued by the company to himself. It was held that the company were justified in refusing to register the transfer. *European Central R. Co., e. p. Holden*, 17 W. R. 877.

A lien on shares extends to negociable instruments not yet due. *London, Birmingham and South Staffordshire Banking Co.*, 34 Beav. 332; 34 L. J., Ch. 418.

A company had power to decline to register any transfer of shares if the transferee was not approved by the directors. The court refused to rectify the register under section 35 in a winding-up, as the transferor was a director and there was no consideration. *Imperial Mercantile Credit Association, Williams' Case*, July, 1869.

Where there was power to refuse assent, made "for purposes not conducive to the interests of the company," the court refused to rectify the register, a transfer having been made by a director. *Joint Stock Discount Co., Butcher's Case*, July 22, 1869.

A company furnished blank powers of attorney for the execution of the deed of settlement in London in the names of parties to whom shares were issued to receive dividends and sell the shares, together

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with certificates issued to allottees of shares in Australia. The deed of settlement gave the company a lien for debts due from shareholders. That lien did not extend to a debt due to a person to whom shares were allotted, who sold them before the deed was executed in his name. *Hunter* v. *Stewart*, 31 L. J., Ch. 346.

A cost-book mining company is not bound to recognize a transfer of a share until all calls made in respect of such share, with interest and expenses, shall have been paid. (32 & 33 Vict. c. 19, s. 14.)

Shares cannot be surrendered.

(5) "It would be contrary to the whole policy of the Joint Stock Companies Acts to hold that a shareholder of a subsisting company could cease to be so without any transfer of his shares, by merely becoming a shareholder in another." *Per* L. J. Turner, *Woodhams* v. *Anglo-Australian Assurance Co.*, 2 D. J. & S. 162; 3 N. R. 698; *British Provident Assurance Co., e.p. Woodhams*, 12 W. R. 677.

Directors had a power to accept surrenders of shares; they accepted the surrender of some shares with the object of removing the opposition of the shareholders to a voluntary winding-up. The winding-up not being on account of insolvency, the transaction was not fraudulent on the part of either the directors or the retiring shareholders. *London and Mediterranean Bank, e.p. Wright*, 37 L. J., Ch. 529.

The misconduct of a company can give a member no right to retire. See *North Staffordshire Steel and Iron Co., e.p. Ward*, L. R., 3 Ex. 180.

Cost-book mining companies.

In cost-book mining companies sometimes there are provisions enabling the shareholders to retire. *Welsh Potosi Mining Co., Birch's Case*, 2 De G. & J. 10; 27 L. J., B. 4; *Wrysgan Slate Quarrying Co., e.p. Birch*, 28 L. J., Ch. 894; *Pennant, &c., Lead Mining Co., e.p. Fenn*, 4 D. M. & G. 285; 22 L. J., Ch. 692 (*a*).

Powers of forfeiture are optional.

Where there is a provision that shares shall be forfeited for non-payment of calls or other reasons, the power of forfeiture is optional, and a shareholder cannot get rid of his shares by incurring a liability

(*a*) *Relinquishment of shares.*]—The Stannaries Act, 1869 (32 & 33 Vict. c. 19), provides—

Sect. 21. *Disposal of relinquished shares.*]—Where a share in a company is relinquished, it shall be carried to an account to be called "The Account of Relinquished Shares," and shall be deemed to be the property of the company, and may be disposed of as the company thinks fit, and any such shareholder may purchase any such share if sold.

Sect. 22. *Relinquishment to be in writing.*]—Every relinquishment of a share shall be by notice in writing delivered to the purser, but a company shall not be bound to recognize the relinquishment of a fractional part of a share.

Sect. 23. *Evidence of relinquishment, &c.*]—A statutory declaration in writing by the purser of a company that a share has been relinquished shall be sufficient evidence of the facts therein stated as against all persons interested in the share, and that declaration, and the receipt of the purser to a purchaser of the share for the price thereof if sold, shall constitute a good title thereto, and the purchaser shall be entered in the cost book as a shareholder in respect of the share, and thereupon he shall be deemed the holder thereof, discharged as against the company from all unpaid calls, interest and expenses due to the company in respect thereof accrued before his purchase, and he shall not be bound to see to the application of the purchase money, nor shall his title to the share be affected by any irregularity in the proceedings in reference to such sale.

to have them forfeited. *East Kongsberg Co., Bigg's Case*, L. R., 1 Eq. 309; 35 L. J., Ch. 216; *Moore* v. *Rawlins*, 6 C. B., N. S. 289; *Heward* v. *Wheatley*, 3 D. M. & G. 628; *Turquand* v. *Kirby*, L. R., 4 Eq. 123; 36 L. J., Ch. 570.

Nor will a notice that shares will be forfeited on nonpayment of calls operate as a forfeiture, *Birmingham and Bristol R. Co.* v. *Locke*, 1 Q. B. 256; *East Kongsberg Co., Bigg's Case*, L. R., 1 Eq. 309; 35 L. J., Ch. 216, unless acted upon. *State Fire Insurance Co., Webster's Case*, 32 L. J., Ch. 135.

Rights of members.

37. Shareholders have a right to have the objects of the company properly carried out, and can restrain the company and its directors from acting beyond the powers of the company and using their powers improperly, and can otherwise sue in respect of breaches of trust affecting the members as a body (*a*)(1). But they cannot restrain the doing of acts within the powers of a majority of shareholders, without first using their utmost endeavours to get a majority to act in the matter (2). They cannot generally interfere in the management of the company (3). They have no right to a share of profits, but dividends, when declared, are debts due to them from the company (4). Dividends must be declared in a manner equally favourable to all shareholders, and where there are different classes of shareholders the provisions regulating their rights will be construed so as procure equality as near as can be (5).

Right to sue is absolute in respect of matters *ultra vires* altogether.

(1) V. C. Wood stated the rule that a single shareholder can restrain an act *ultra vires:* "It is clear that a single shareholder, holding five or ten shares or less, is perfectly justified in applying to the court to restrain a company on behalf of himself and the other shareholders by injunction from committing any illegal act beyond their powers. It does not signify if all the other shareholders are pitted against the holder of ten shares." *Charlton* v. *Newcastle R. Co*, 5 Jur., N. S. 1095.

L. J. Cairns, in restraining a company from carrying out an arrangement, though beneficial, said, "If it is *ultra vires*, if it is illegal, any member of the company may dissent from it, and has a right to appeal to the court to be protected against its effects." *Hoole* v. *Great Western R. Co.*, L. R., 3 Ch. 268. So L. J. Rolt, "If the scheme proposed lies altogether beyond their power we have nothing to do

(*a*) For instances of suits to restrain companies and directors from doing acts *ultra vires*, see *ante*, **13**, p. 41; **17**, p. 69. For instances of suits to restrain the carrying out the powers improperly, see *ante*, **21**, p. 85. For instances of suits to make directors account for breach of trust, see *ante*, **25** (3), (4), p. 98.

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with its merits, but have only to see that the company do not exceed their powers." *Ib.* 274.

Frame of suits and parties.

Suits by a shareholder in respect of injuries common to himself and other shareholders are brought on behalf of himself and all other shareholders, except those concurring in the matters complained of. *White* v. *Carmarthen and Cardigan R. Co.*, 1 H. & M. 786; 33 L. J., Ch. 93, a case where the directors were sued for breach of trust; *Colman* v. *Eastern Counties R. Co.*, 4 R. C. 513; 16 L. J., Ch. 73, a suit to restrain the doing of acts *ultra vires*. In *Baldwin v. Lawrence*, 2 S. & S. 18, a bill by three partners against the managing committee was dismissed, as not being filed on behalf of all the partners.

Where there are several classes of shareholders, it is not necessary that they should be separately represented if there are no conflicting interests between them as far as the relief prayed is concerned. *Dumville* v. *Birkenhead R. Co.*, 12 Beav. 444.

But for a private injury a shareholder must not sue on behalf of himself and the other shareholders. *Croskey* v. *Bank of Wales*, 4 Giff. 314; 9 Jur. 595. But such a bill will not now be dismissed by virtue of 15 & 16 Vict. c. 86, s. 48. *Hallows* v. *Fernie*, L. R., 3 Eq. 520; 36 L. J., Ch. 273.

Compare *Sweeny* v. *Smith*, L. R., 7 Eq. 324, *post*, 139.

Companies empowered to sue, &c.

Members of a company empowered to sue and be sued brought a suit on behalf of themselves and all other shareholders to make directors account as trustees. A demurrer for want of parties was overruled. *Hichens* v. *Congreve*, 4 Russ. 562.

But such a suit will be difficult to work out when the body of members is large. See remarks of Lord Eldon in *Van Sandau* v. *Moore*, 1 Russ. 441, a suit of that nature.

Strangers.

When it is sought to restrain the carrying out a contract *ultra vires*, the parties to the contract are to be made parties to the suit. *Hodgson* v. *Powis*, 1 D. M. & G. 6; 21 L. J., Ch. 17; *Solomon* v. *Laing*, 20 Beav. 377. In a suit to restrain a railway company from carrying out a traffic agreement as *ultra vires*, another company with whom the agreement was made was a necessary party. *Hare* v. *London and North Western R. Co.*, 1 J. & H. 252.

Acquiescing members.

If there are shareholders who have acquiesced in the matters complained of, they ought to be separately represented. *Kent* v. *Jackson*, 14 Beav. 3, 67; 2 D. M. & G. 69.

Where the plaintiff belongs to a class of shareholders, and there are other shareholders whose interests in the matter in question are not the same, the other shareholders must be represented. *Carlisle* v. *South Eastern R. Co.*, 1 M. & G. 689.

A shareholder sued on behalf of himself and all other shareholders of a certain class. Some of that class had paid a call, which formed part of the cause of the suit. Held, they ought to have been separately represented; and, further, the bill was defective by reason of its not alleging that the shareholders of the other classes were sufficiently represented. *Bailey* v. *Birkenhead R. Co.*, 19 L. J., Ch. 337; 12 Beav. 433.

In a suit by one shareholder on behalf of himself and others, it was not necessary to make shareholders, who were numerous and in the same position as himself, but who did not take his view, defendants.

They were sufficiently represented by the directors. *Williams* v. *Salmond*, 2 K. & J. 463.

Where a bill sought an injunction to restrain calls being enforced, and alleged that the plaintiff did not know the names of those shareholders who had paid calls, it was held they were not necessary parties. *Hodgkinson* v. *National Live Stock Insurance Co.*, 4 De G. & J. 422.

In a suit by shareholder on behalf of himself and others to restrain a company from carrying out an amalgamation *ultra vires*, it was not necessary to make those shareholders who acquiesced parties. *Clinch* v. *Financial Corporation*, L. R., 4 Ch. 117.

In a suit to restrain undue issue of shares by way of payment of dividends, a director who had accepted such shares was held to represent sufficiently the accepting shareholders. *Hoole* v. *The Great Western R. Co.*, L. R., 3 Ch. 262.

Multifarious bills.

A bill praying relief on behalf of all the shareholders, or, alternatively, relief only affecting himself, was improper. *Thomas* v. *Hobler*, 8 Jur., N. S. 125.

In *Sweeny* v. *Smith*, L. R., 7 Eq. 324, a defence was attempted on this ground. That was a suit to set aside the purchase of a patent, and to declare a forfeiture of shares void. A declaration was made that the forfeiture was void, the Master of the Rolls thinking that all the shareholders were interested in not having shares improperly forfeited.

Disqualification of plaintiff.

The smallness of the interest of a shareholder is no bar to his suing in respect of acts done or attempted to be done by directors when suing on behalf of himself and all other shareholders. L. J. Turner, in reference to an objection to a suit of this nature, said, "He (the plaintiff) is, however, suing on behalf of himself and the other shareholders of the company, and I am not prepared to say that the ordinary rule as to suits for a subject-matter of less value than 10*l.* applies to a case of this kind." And L. J. Cairns: "I think the aggregate interest of all the shareholders in the subject-matter of the suit is amply sufficient to sustain the suit." *Seaton* v. *Grant*, L. R., 2 Ch. 459; 36 L. J., Ch. 863. So *Bloxam* v. *Metropolitan R. Co.*, L. R., 3 Ch. 337; *Williams* v. *Salmond*, 2 K. & J. 463.

Smallness of interest.

Taking shares in order to sue.

Nor is the fact, that the plaintiff has acquired his interest on purpose to institute the proceedings, any bar to his doing so. "It is not maintenance, nor anything savouring of it, to purchase shares in a company for the purpose of instigating a suit to restrain the carrying out an agreement made by the company alleged to be illegal." *Hare* v. *London and North Western R. Co.*, John. 722.

In *Seaton* v. *Grant*, L. R., 2 Ch. 459; 36 L. J., Ch. 638, the Lords Justices, affirming the decision of V. C. Malins, refused to order a bill to be taken off the file or to stay proceedings, because the plaintiff had bought his shares on purpose to file the bill. And in *Bloxam* v. *Metropolitan R. Co.*, L. R., 3 Ch. 337, granted an interlocutory injunction to a plaintiff in that position. Compare C. A. 1867, s. 40.

Instigation.

The fact that the plaintiff has been instigated to take proceedings by some one else is no defence to such a suit. An injunction was granted to restrain a company from doing acts *ultra vires* at the instance of a shareholder who was instigated by a rival company. *Colman* v. *Eastern Counties R. Co.*, 10 Beav. 1; 19 L. J., Ch. 75.

Par. 37 (1).

So where the plaintiff was instigated by other shareholders, *Bloxam* v. *Metropolitan R. Co.* L. R., 3 Ch. 337.

In *Hattersley* v. *Shelburn*, 31 L. J., Ch. 873, V. C. Kindersley said, "The question is,—is this so immediately the suit of the South Western that I ought on that account to disregard the claims of the plaintiff which he puts forward, and to treat him as not being a *bonâ fide* plaintiff? No doubt there have been cases—and a case has been referred to—where it appeared that the plaintiff was indemnified by a particular company in respect of a suit instituted by him, and it was clear that it was not his suit at all, and that he was a mere puppet in the hands of a company behind the scenes. In such a case as that the court will be bound, I apprehend, to refuse all relief, and to say that it would not entertain the claim of a person who comes forward in that way. But this appears to be far from that; at all events, there is nothing proved to that extent, or approaching it."

But the mere puppet of some one else who indemnifies him will not be allowed to sue. Where the proceedings were directed by, and expenses guaranteed by, a rival company, Lord Westbury said, "I have nothing to do with the motives of men suing in this court. If they come here in a *bonâ fide* character, the reasons for their coming here is a matter beyond the province of a court of justice to inquire into." "But coming here in the character of a shareholder, and telling me frankly that it is not his own act but an act that he has been directed to do by the other company, I denominate the suit an imposition upon the court, and dismiss it accordingly." *Forrest* v. *Manchester R. Co.*, 7 Jur., N. S. 887.

Where the plaintiff was a mere nominee of persons who indemnified him, the court refused to interfere by interlocutory injunction to restrain the doing of acts *ultra vires*. *Fuller* v. *London and Brighton R. Co.*, 1 H. & M. 489.

Where the former solicitor of a company had purchased a share for a person in low position dependent on him, who filed a bill against the company, the bill was taken off the file on motion. *Robson* v. *Dodds* (2), 17 W. R. 782.

On the other hand, shareholders who might sue themselves cannot do so by means of a shareholder who has precluded himself from his right to sue. *Burt* v. *British National Insurance Association*, 2 De G. & J. 158; 25 L. J., Ch. 731.

Majority must be consulted in matters within their power.

(2) In a suit to restrain directors from doing acts the court thought within the power of majorities, V. C. Wigram said, "Whilst the court may be declaring the acts complained of to be void at the suit of the present plaintiffs, who in fact may be the only proprietors who disapprove of them, the governing body of proprietors may defeat the decree by lawfully resolving upon the confirmation of the very acts which are the subject of the suit. The very fact that the governing body of proprietors assembled at the special general meeting may so bind even a reluctant minority is decisive to show that the power of this suit cannot be sustained whilst that body retains its functions. In order that this suit may be sustained, it must be shown either that there is no such power as I have supposed remaining in the proprietors, or at least that all means have been resorted to and found ineffectual to set that body in motion." *Foss* v. *Harbottle*, 2 Hare, 494.

In a suit by some members of a large partnership, the court refused to interfere with alleged mismanagement until the plaintiffs had tried the means of redress provided by the articles. *Carlen* v. *Drury*, 1 V. & B. 154.

In a bill by some directors of an insurance company against another director, the court refused to interfere by continuing an injunction, the plaintiffs not having made use of their powers of regulation given them by the deed constituting the company. *Ellison* v. *Bignold*, 2 J. & W. 503. So Lord Cottenham refused an injunction against persons acting as directors on the ground that the acts complained of were, if an injury, "an invasion of the rights of the corporation, and yet no reason is assigned by the bill why the corporation does not put itself in motion to seek a remedy." *Mozeley* v. *Aston*, 2 Ph. 800; *Lord* v. *Copper Miners Co.*, 2 Ph. 65; 18 L. J., Ch. 740; *Cooper* v. *Shropshire Union R. Co.*, 13 Jur. 443. See also *Bailey* v. *Birkenhead R. Co.*, 12 Beav. 443; 19 L. J., Ch. 357.

Certain shareholders in a Scotch railway company, the objects of which had not been carried out, raised an action against the company and the individual directors for a return of part of a call as being made in excess of their powers. It was held, that though the directors might have been acting beyond their powers, their acts could have been confirmed by a meeting of shareholders, and the proper course of the complainants would have been to have called a meeting. *Orr* v. *Glasgow, &c. Junction R. Co.*, 3 Macq. 799.

A company issued new shares in accordance with a resolution under which the money raised was to be applied to specific purposes: a demurrer to a bill on behalf of himself and the other new shareholders was allowed. *Yetts* v. *Norfolk R. Co.*, 3 De G. & Sm. 293.

Where, however, owing to peculiar circumstances, the complaining shareholder cannot get a *bonâ fide* majority to act in the matter, he may take proceedings himself. Where a majority of shareholders refused to take steps to set aside a purchase, but the majority was obtained by the votes of the vendor, whose shares were given him as part of the purchase-money, a single shareholder maintained a bill to set the contract aside. *Atwool* v. *Merryweather*, 37 L. J., Ch. 35; L. R., 5 Eq. 468 (n.), following a dictum in *East Pant Du Mining Co.* v. *Merryweather* (2), 5 N. R. 166.

Under peculiar circumstances an injunction was granted to restrain a majority of directors acting in a manner which had been sanctioned by a general meeting till the opinion of another meeting could be obtained. *Exeter and Crediton R. Co.* v. *Buller*, 5 R. C. 211; 16 L. J., Ch. 449.

Individual shareholders cannot bring suits in the name of a company. *East Pant Du Mining Co.* v. *Merryweather*, 5 N. R. 166; 2 H. & M. 254.

In that case, V. C. Wood had, under peculiar circumstances, allowed a bill filed in the name of the company to remain on the file till the complaining shareholder had attempted to get the consent of a meeting. *East Pant Du Mining Co.* v. *Merryweather*, 4 N. R. 541.

In case of winding-up.

But in winding-up proceedings contributories may make any applications at their own risk as to costs, and in some instances they have been allowed to take proceedings for the benefit of the whole body of shareholders without first taking the sense of a majority. See C. A. 1862, ss. 91, 139.

Par. 37 (2).

Leave was given by the court to use the name of the company or liquidators in proceeding to set aside an amalgamation which had been sanctioned by a meeting at which a resolution to wind up the company was passed. *Imperial Bank of China, India and Japan*, L. R., 2 Ch. 349; 35 L. J., Ch. 445.

In a voluntary winding-up leave was granted on petition to use the name of the company in proceedings against the directors, the petitioners indemnifying the company. *Bank of Gibraltar and Malta*, L. R., 1 Ch. 69; 35 L. J., Ch. 49.

A contributory on an appeal motion was allowed to intervene and file affidavits bringing forward fresh evidence. *Scottish Universal Finance Bank, e.p. Ship*, 5 N. R. 481; on the hearing of this case in the House of Lords the appeal was dismissed, as the applicant had precluded himself by his conduct from moving in the matter, *Downes* v. *Ship*, L. R., 3 E. & Ir. 343; 37 L. J., Ch. 642.

(3) The extent to which shareholders can interfere with the management of companies is a matter settled by the regulations of the particular company, but such regulations will be construed so as to give as little power of meddling as possible.

Right of inspection.

Shareholders are not allowed to inspect the documents of the company for the purpose of fishing out a defence to an action for calls. *Birmingham and Bristol R. Co.* v. *White*, 1 Q. B. 282.

A provision that "the book wherein the proceedings of the company are recorded," "shall be open to the inspection of the shareholders every day of the year," was held not to give a right to inspect books of minutes of proceedings of directors, but only those of general meetings. *Reg.* v. *Mariquita Mining Co.*, El. & El. 288; 28 L. J., Q. B. 67. Lord Campbell said, "It is highly proper that an inspection of the books containing the proceedings of the directors should be obtained on special occasions and for special purposes, but the business of such companies could hardly be conducted if any one by buying a share might entitle himself at all times to gain a knowledge of every commercial transaction in which the directors engage the moment that an entry of it is made in their books."

The right is enforceable by writ of mandamus. *Ib.*

Mandamus will not be granted where under a company's special act a shareholder has a right of inspection, unless he shows that he has given a proper reason and been refused by the executive of the company. *R.* v. *Grand Junction Canal Co.*, 1 Ir. L. R. 337; *R.* v. *The Wilts and Berks Canal Co.*, 3 A. & E. 477.

A proportion of the shareholders may obtain an examination into the affairs of the company at the hands of the Board of Trade. C. A. 1862, s. 56 and the following sections.

Nature of dividends.

(4) Where a single shareholder filed a bill on behalf of himself and all other shareholders to restrain directors from paying a dividend already declared, an injunction was refused on the ground that the declaration recited a debt due to each shareholder, and the injunction could not be granted without each of them was party to the suit. *Fawcett* v. *Laurie*, 1 De G. & Sm. 192; following *Carlisle* v. *South Eastern R. Co.*, 1 M. & G. 689, where, it being illegal to pay dividends to a class of shares till certain works were completed, the holder of some of these shares sought to restrain the payment of dividends already declared, Lord Cottenham said, "The declaration

of the dividend gave to each and every of those in whose favour it was made a separate and distinct right to the sum so allotted to him, and so created an interest directly opposed to the case made and the relief prayed by the bill." See also *Stevens* v. *South Devon R. Co.*, 9 Hare, 313.

The court did not think the breach of public duty in not completing the whole of the works for which a company was formed under an act of parliament was sufficient ground to stay payment of dividends. *Browne* v. *Monmouthshire R. Co.*, 13 Beav. 32.

However debts due to a member in the character of member are not to be paid in a winding-up until the other debts are satisfied. C. A. 1862, s. 38 (7).

The deed of settlement of a banking company provided that the company should have a lien on shares: held, that the lien extended to dividends. *Hague* v. *Davidson*, 17 L. J., Ex. 269; 2 Ex. 741.

An authority to receive dividends does not require a stamp. 27 & 28 Vict. c. 90, s. 2.

Remedy in respect of unfair dividends.

A shareholder may bring an action at law for damages where dividends have been declared favouring other classes of shareholders. *Coey* v. *Belfast and Down R. Co.*, Ir. R., 2 C. L. 112.

In *Adley* v. *Whitstable Co.*, 19 Ves. 304, a member of a corporation who had been excluded from his right to dredge oysters by an illegal bye-law, was held entitled to an account of profits. "But," said Lord Eldon, "it must be recollected that if a reasonable compensation is offered to the plaintiff and perversely refused,—if the relief can be had without going through this form, and the account and inquiry should be prosecuted unnecessarily, the costs are in the discretion of the court."

Equality is equity.

(5) A company has no right to pay dividends by issuing shares to the members. If under the circumstances the company could sell the shares and place the price to the credit of profits, each shareholder had a right to have the proceeds of the whole applied rateably in payment of dividends. *Hoole* v. *Great Western R. Co.*, L. R., 3 Ch. 262.

The dividends on some shares were limited to 10*l.* per annum, on others to 7*l.* When there was not sufficient to pay the whole 10*l.* the dividends on the shares limited to 7*l.* had not to abate. *Maughan* v. *Leamington Gas Co.*, 15 W. R. 333.

In *Coey* v. *Belfast, &c., R. Co.*, Ir. R., 2 C. L. 112, an act was construed to give equality between different classes of preference dividends.

Compare *London India Rubber Co.*, L. R., 5 Eq. 519; *post*, C. A. 1862, s. 109, note, and C. A. 1867, s. 24.

Preference shares.

Where preference shares are limited to a fixed amount, it has been held that the holders of them are entitled to be paid back dividends out of the profits of future years. *Henry* v. *Great Northern R. Co.*, 1 De G. & J. 606; 27 L. J., Ch. 1; *Corry* v. *Londonderry, &c. R. Co.*, 30 L. J., Ch. 290; *Crawford* v. *North Eastern R. Co.*, 3 K. & J. 723. And in *Coates* v. *Nottingham Waterworks*, 80 Beav. 86, an act of parliament was construed so as to make it provide for payment of past income to preference shareholders.

Par. **38.**

Liabilities of members (*a*).

38. Calls made upon the members of companies governed by the Act of 1862 are specialty debts (1), due from the members at the time of the calls being made (2) and the estates of deceased members whose shares have not been vested in other people (3). Calls are to be made as equally on all members as is consistent with the regulations of the company (4).

Nature of calls.

(1) Calls made by a company under the Act of 1862 are specialty debts (s. 16). Calls made by the court in the winding-up of a company are specialty debts (s. 75). To procure payment of the latter an order is made on each shareholder, which is enforced in the same way as any other order of the court (see *post*, General Order of Nov. 1862, r. 34).

As to rules of pleading with respect to actions for calls, see C. A. 1862, s. 70.

A call can be set off against a debt due from the company. *Price* v. *The Denbigh R. Co.*, 17 W. R. 572.

Validity of calls independent of other matters.

That the company has commenced business before the capital has been properly subscribed for is no answer to an action for calls. *Ornamental Woodwork Co.* v. *Brown*, 32 L. J., Ex. 190.

It was so held in an action by trustees with whom the shareholders had covenanted to pay calls. *Hutt* v. *Giles*, 12 M. & W. 492; 13 L. J., Ex. 337; *London and Continental Assurance Co.* v. *Redgrave*, 4 C. B., N. S. 524. Under the particular provisions of an act of parliament a call made before all the capital was subscribed was not valid, though it was all subscribed before the call was made payable. *Norwich and Lowestoft Navigation Co.* v. *Theobald*, 1 Moo. & M. 151. Compare *Great Cambrian Mining Co., e.p. Hawkins*, 2 K. & J. 253; 25 L. J., Ch. 221; *post*, C. A. 1862, s. 98, note.

A company's special act contained a proviso that the company should not issue any shares created under the authority of the act, and that no share should vest in the person accepting the same unless and until a sum not being less than one-fifth of the amount of such shares should be paid in respect thereof: this proviso it was held did not prevent the company recovering calls, although one-fifth of the amount had not been paid up. *East Gloucestershire R. Co.* v. *Bartholomew*, L. R., 3 Ex. 15; 37 L. J., Ex. 17.

It is no defence to an action for calls that the company has not carried out a collateral contract made when the shareholder sued took his shares. *West Cornwall R. Co.* v. *Mowatt*, 15 Q. B. 529; 19 L. J., Q. B. 478.

The statement in a prospectus that "no further calls are contemplated" could not be used as an equitable plea to resist an action for calls. *Accidental and Marine Insurance Co.* v. *Davis*, 15 L. T., N. S. 182.

Irregularities as to a register of shareholders in respect of shares of other shareholders are no defence to actions for calls. *London*

(*a*) As to the extent of the liabilities of members, see C. A. 1862, ss. 13, 38 (4) (5). As to the effect of bankruptcy on the liability of members, see *ante*, p. 128; also C. A. 1862, ss. 75, 77.

and Grand Junction R. Co. v. *Freeman*, 2 Man. & Gr. 606; *London and Grand Junction R. Co.* v. *Graham*, 1 Q. B. 271; *Southampton Dock Co.* v. *Richards*, 1 M. & G. 448.

Want of notice of a call to other shareholders is no defence to an action for calls. *Shackleford, Ford & Co.* v. *Owen*, 37 L. J., C. P. 151.

It was provided that in actions for calls a company need not prove "the appointment of the directors who made the calls." A member sought to restrain the company from suing him at law on the ground that he was there precluded from showing that the directors had not been properly appointed. *Mangles* v. *Grand Collier Dock Co.*, 10 Sim. 519; 9 L. J., Ch. 177.

But in another case an injunction was granted to restrain a company from suing a person wrongfully on the register of shareholders. *Bloxam* v. *Metropolitan Cab, &c. Co.*, 4 N. R. 51.

A shareholder was not estopped from disputing a call because he had joined in making it, and had paid it in part. *Stratford and Moreton R. Co.* v. *Stretton*, 2 B. & Adol. 518; 9 L. J., K. B. 268.

Construction of powers of making calls.

A call having been made under the Companies Clauses Act payable by instalments, it was held that where one instalment was due it could not be sued upon. *Ambergate, &c. R. Co.* v. *Coulthard*, 19 L. J., Ex. 311; 5 Ex. 459. But this was overruled. *Ambergate R. Co.* v. *Norcliffe*, 20 L. J., Ex. 234; 6 Ex. 629; *London and North Western R. Co.* v. *M'Michael*, 6 Ex. 273; 20 L. J., Ex. 233; *Birkenhead R. Co.* v. *Webster*, 20 L. J., Ex. 233; 6 Ex. 277.

Semble, where it is provided that calls shall not be made except at a certain interval, time of making means time of payment. *Ambergate R. Co.* v. *Michell*, 4 Ex. 540.

Calls are distinct from deposits made on application, or payments made on allotment; therefore, where a prospectus stated that calls should not exceed 5*l.*, and that at least three months should intervene between the times of payment of two successive calls, it was held that a call of 5*l.* might be made within three months from the times of payment of a deposit of 1*l.* and payment on allotment of 1*l.* *Croskey* v. *Bank of Wales*, 4 Giff. 914; 9 Jur. 595.

Termination of liability,

(2) Where a transfer of shares is made after a call has been made, but before it is payable, it is thought that, in the absence of any provision in the articles of association, there is a debt due from the transferor. See C. A. 1862, Table A. (4) (6); C. A. 1856, Table B. (3).

It was so held on the construction of a particular act of parliament. *North American Colonial Association of Ireland* v. *Bentley*, 19 L. J., Q. B. 427. And also on the Companies Clauses Consolidation Act. *Belfast, &c. R. Co.* v. *Strange*, 1 Ex. 739; *Birkenhead, &c. R. Co.* v. *Brownrigg*, 4 Ex. 426; *Wilson* v. *Birkenhead R. Co.*, 6 Ex. 626.

But on the construction of another act of parliament, it was held that the company could sue neither the transferor nor the transferee. *Aylesbury R. Co.* v. *Mount*, 4 M. & Gr. 651; *Aylesbury R. Co.* v. *Thompson*, 2 R. C. 668; *Shelford on Railways*, 4th ed., vol. 2, pp. 67, 76.

A call was made before shares were forfeited, which was not payable till afterwards; the debt was not extinguished. *China and Labuan Steam Ship Co., e.p. Dawes* (2), 38 L. J., Ch. 112.

Par. 38 (2).

It was so held also under the Companies Clauses Consolidation Act. *Great Northern R. Co.* v. *Kennedy*, 4 Ex. 417; *Inglis* v. *Great Northern R. Co.*, 1 Macq. 12.

Shares were forfeited for non-payment of calls. The articles of association provided that forfeiture should involve the extinction of all interest in and claims and demands against the company in respect of the shares, and all other rights incident to the shares; but that any member whose shares had been forfeited should be liable to pay to the company all calls owing on such shares at the time of forfeiture. Interest was payable under the articles upon calls in arrear at the rate of 25*l.* per cent. It was held that no interest could be claimed under the articles upon calls owing in respect of forfeited shares, and that inasmuch as the provisions in the articles created a new right to the calls, and no notice had been given, 3 & 4 Will. 4, c. 42, s. 28, did not apply. *Re Blakeley Ordnance Co., Stocken's Case*, 37 L. J., Ch. 230; L. R., 5 Eq. 6; 3 Ch. 412.

in case of death.

(3) A company was wound up nine years and a half after the death of A. Shares to which his executor was beneficially entitled were allowed to remain in A.'s name. His estate was held liable to contribute to the debt of the company, though in the hands of specific legatees and devisees. *Turquand* v. *Kirby*, L. R., 4 Eq. 123; 36 L. J., Ch. 570, following *St. George's Steam Packet Co., e.p. Hamer's Devisees*, 21 L. J., Ch. 832; 2 D. M. & G. 366.

A company was allowed to prove in an administration suit for calls made after the death of a shareholder. *Heward* v. *Wheatley*, 3 De G. & Sm. 628; *Fyler* v. *Fyler*, 2 R. C. 813; *Wills* v. *Murray*, 4 Ex. 843; 19 L. J., Ex. 209; *Blount* v. *Hipkins*, 7 Sim. 51.

The personal representatives of deceased shareholders are put on the list of contributories. C. A. 1862, s. 76.

Where calls are specialty debts, the executor need not make any provision for future calls against simple contract creditors. *Wentworth* v. *Chevill*, 26 L. J., Ch. 760; *Henderson* v. *Gilchrist*, 17 Jur. 570.

In an administration suit instituted by the residuary legatee, the executor was not allowed to retain an indemnity fund to meet future claims in respect of shares in a mining company which had been sold by the testator for a nominal price, but had not been registered in the name of the purchaser. *Williams* v. *Headland*, 3 N. R. 412.

Equality is equity.

(4) New shares in a banking company were issued upon terms that profits were to be received only after a certain day. Before that day the bank stopped payment. The holder of the new shares had to contribute equally with the holders of the old shares. *Leeds Banking Co., e.p. Barrett* (2), 6 N. R. 286.

Different classes of shareholders in an unlimited company were held liable to contribute to the costs of winding up *pari passu*. *Rugby, &c. R. Co., e.p. Preece*, 2 D. M. & G. 347.

See also *Electric Telegraph Co. of Ireland, e.p. Bunn*, 29 L. J., Ch. 913; 2 D. F. & J. 275; and *Preston* v. *Grand Collier Dock Co.*, 11 Sim. 327; *ante*, p. 46.

Compare C. A. 1867, s. 24.

CHAPTER VI.

THE NATURE OF SHARES AS PROPERTY.

The nature of shares as property.

39. Shares are personal property (1). The mode of transmission of the legal interest (2) in shares is determined by the regulations of each particular company (3). Upon the death of a member, his representatives have a power of disposing of his shares in the same way as he could himself (C. A. 1862, s. 24). Upon his bankruptcy his interest passes to his assignees (4). Shares are liable to be taken in execution for judgment debts (5), and are of such a specific nature that contracts relating to their sale will be enforced in equity (6); they are within the "reputed ownership" clauses of "The Bankruptcy Act, 1849" (7), and are generally regulated by the laws relating to personal property (8).

Are personal property.

(1) By C. A. 1862, s. 22, it is enacted, that "the shares or other interest of any member in a company under this act shall be personal estate, and shall not be of the nature of real estate." This is merely declaratory of what the law would be without special enactment.

As between the real and personal representatives, the interest of a shareholder in even the real estate of an ordinary partnership is personal property. *Lindley on Partnership*, 667.

Statutes of Mortmain.

Shares of companies holding land are not interests in land within the Mortmain Acts. *Hilton* v. *Giraud*, 1 De G. & Sm. 183; 16 L. J., Ch. 285; *Sparling* v. *Parker*, 9 Beav. 450; *Walker* v. *Milne*, 11 Beav. 507; 18 L. J., Ch. 288; *Ashton* v. *Lord Langdale*, 4 De G. & Sm. 402; *Sniley* v. *Tayler*, 2 D. F. & J. 84; *Edwards* v. *Hall*, 6 D. M. & G. 64; 25 L. J., Ch. 82; *Myers* v. *Perigall*, 2 D. M. & G. 599; 18 L. J., Ch. 195; *Hayter* v. *Tucker*, 4 K. & J. 243; *Baker* v. *Sutton*, 1 Keen, 234; *March* v. *Attorney General*, 5 Beav. 433. *Ware* v. *Cumberledge*, 20 Beav. 503; 24 L. J., Ch. 630, the only case *contra*, has been overruled.

Statute of Frauds, s. 4.

Nor are they interests in lands within the 4th section of the Statute of Frauds. *Bligh* v. *Brent*, 2 Y. & C., Ex. 268; *Powell* v. *Jessop*, 18 C. B. 336; 25 L. J., C. P. 199; *Walker* v. *Bartlett*, 18 C. B. 845; 25 L. J., C. P. 263; *Watson* v. *Speatley*, 10 Ex. 222; 24 L. J., Ex. 53; *Humble* v. *Mitchell*, 11 A. & E. 205; 9 L. J., Q. B. 29; *Duncroft* v. *Albrecht*, 12 Sim. 189; *Bradley* v. *Holdsworth*, 3 M. & W. 422.

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Electoral franchise.

They do not confer the right to vote for members of parliament. *Bulmer* v. *Norris*, 9 C. B., N. S. 19; 30 L. J., C. P. 25; *Acland* v. *Lewis*, 9 C. B., N. S. 32; 30 L. J., C. P. 29; *Tepper* v. *Nichols*, 18 C. B., N. S. 121; 34 L. J., C. P. 61; *Bennet* v. *Blain*, 15 C. B., N. S. 581; 33 L. J., C. P. 63; *Freeman* v. *Gaisford*, 18 C. B., N. S. 185; 34 L. J., C. P. 95; 31 L. J., C. P. 33.

Legal interest.

(2) Shares bear a certain analogy to real estate, in that the possessor of the legal interest has the same advantages over persons otherwise equally entitled in equity.

Where equities are equal the law will prevail.

A. had executed a transfer of shares in blank as to the name of the transferee and description of the shares intended to be sold. The broker filled up the description of more valuable shares in the same company belonging to A. The transferee knew that the transfer had been executed in blank. A. was entitled to the shares. *Tayler* v. *Great Indian Peninsula R. Co.*, 4 De G. & J. 559; 28 L. J., Ch. 709.

A broker employed to purchase shares received from his principal the deed of transfer and certificate to get the shares registered in his name. The broker then cancelled the signature of the transferee his principal, with his consent obtained by fraud, and induced the transferee to execute a new transfer to himself, procured his own name to be placed on the register of shareholders, and then transferred the shares by way of mortgage. Held, that the first transferee was entitled to the shares, and to have the second transfer cancelled. *Donaldson* v. *Gillot*, L. R., 3 Eq. 274.

S. entrusted a box containing a certificate of shares to his broker, who broke open the box and forged a transfer of the shares. A new certificate having been issued to the vendor who sold the shares, S. was held entitled to the shares and to have his name replaced on the register. *Swann* v. *North British Australian R. Co.*, 32 L. J., Ex. 273.

In *Midland R. Co.* v. *Taylor*, 31 L. J., Ch. 336; affirming same case, 29 L. J., Ch. 731; 28 Beav. 287, one joint legal owner of stock had forged the signature of the other to a transfer; the latter died; the court held that the legal interest being in the trustee of the persons beneficially interested, they had a right to come into equity to have the shares transferred to them.

Where a shareholder deposited a certificate of shares with a broker who sold the shares and forged a transfer, and the company issued a fresh certificate to the purchaser, the depositor was entitled to the shares. *Bahia and San Francisco R. Co.*, 37 L. J., Q. B. 176.

Debentures issued under parliamentary powers sometimes partake of many of the qualities of paid up shares or stock. Debentures assignable by deed were vested in three trustees. One of them executed a deed of transfer to which he forged the signatures of the other two. The name of the transferee who had purchased the debentures was placed in the books of the company as that of the holder of the debentures. On a bill by the other two trustees the transfer was declared void, and the entry thereof in the books of the company was directed to be cancelled, and the debentures to be delivered up to the plaintiffs. It was doubted whether the company or the purchaser were to bear the loss. *Cottam* v. *Eastern Counties R. Co.*, 30 L. J., Ch. 217; 1 J. & H. 243.

Nevertheless it has been held, that a mortgagee who took a transfer of shares without notice of a trust, but received notice before he was registered as member, did not obtain priority over the *cestui que trust*. *Dodds* v. *Hills*, 2 H. & M. 424. Exceptions.

Where shares are transferred to two people, on the death of one the whole legal interest is vested in the survivor. *Garrick* v. *Tayler*, 30 L. J., Ch. 211 ; 31 L. J., Ch. 68 ; 29 Beav. 79. Joint ownership.

(3) Shares are "capable of being transferred in manner provided by the regulations of the company." C. A. 1862, s. 22. Transfers.

There seems no reason why shares should not pass by the mere delivery of some document, though it does not appear that any companies governed by the Act of 1862 have adopted that mode of transfer. By delivery.

By the Companies Act, 1867, companies may obtain the power of issuing share warrants in respect of stock or fully paid up shares which entitle the bearer to the shares, stock and dividends thereof. C. A. 1867, ss. 27—36.

A mere agreement to transfer passed the interest of a shareholder in a cost-book mining company, when the transferor had been made a shareholder in the same way. *Northey* v. *Johnson*, 19 L. T. 104.

Where shares pass by delivery and are in the hands of agents, the legal interest is in the principal. Where agents had taken shares for their principal and retained the scrip certificates and received the dividends on behalf of their principal, the agents were not placed on the list of contributories. *Mexican and South American Co., e.p. Findlay*, 27 L. J., Ch. 664 ; 26 Beav. 182.

If transfers are made by deed they cannot be made in blank, this arises from the nature of a deed. *Hibblewhite* v. *M'Morine*, 6 M. & W. 200 ; *Humble* v. *Langston*, 7 M. & W. 517. Transfers in blank.

B. accepted a transfer in blank as to the number of shares on the understanding that they were fully paid up shares ; the numbers of the shares were afterwards filled up ; he retransferred the shares a little before the company was wound up : held, that he could not be made a contributory as a part member as the transfer was a nullity. *Blakely Ordnance Co., Bailey's Case*, 14th July, 1869.

A transfer of shares was executed by the transferor without any description of the shares ; the description was filled in before the transferee executed, except the denoting numbers which were filled in afterwards ; the transfer was registered : it was held, that the transaction was not invalidated by the fact of the deed having been executed in an incomplete form, and the transferee was made a contributory. *Re Barned's Banking Co., e.p. Contract Corporation*, L. R., 3 Ch. 105 ; 37 L. J., Ch. 81 ; 36 L. J., Ch. 732. Informal transfers.

In the judgment of L. C. Cairns, the question of the transfer being void was not referred to, and in the court below the Master of the Rolls rested his decision both upon the ground that the transfer was good, and that the contract corporation having acted upon it could not repudiate it.

Where 100*l.* shares had been illegally sub-divided into 10*l.* shares, the transferee of a number of the 10*l.* shares was made a contributory in respect of the 100*l.* shares which they could be traced to represent. *New Zealand Banking Corp., Sewell's Case*, L. R., 3 Ch. 131 ; *Financial Corp., Feiling's Case*, L. R., 2 Ch. 714 ; 36 L. J., Ch. 87. Misdescription.

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The legal interest does not pass by a deed of assignment where a different form of transfer is provided by the rules of the company. *North of England Banking Co., e.p. Hall*, 1 M. & G. 307; *Reg.* v. *General Cemetery Co.*, 25 L. J., Q. B. 342; 6 E. & B. 415.

Where a transfer of shares and stock was made to a fictitious person, on the death of the transferor his administrator was entitled to receive the dividends and transfer the property. *Arthur* v. *Midland R. Co.*, 3 K. & J. 204.

B. accepted a transfer from A. who had not the legal interest; a transfer was afterwards executed by the legal owner to the general attorney of A. who was out of the country. B. did not become liable as a shareholder to pay calls. *Bloxam* v. *Metropolitan Cab Co.*, 12 W. R. 736; 4 N. R. 51.

A. B. and C. being entitled to shares in the same company conveyed them by the same deed to D. The *ad valorem* stamp was calculated on the whole shares collectively: held, that the deed was admissible in evidence. *Wills* v. *Bridge*, 18 L. J., Ex. 384; 4 Ex. 193.

(4) There is no provision in the Companies Act as to the power of assignees in bankruptcy to vest the membership in themselves or purchasers from them, it being left for the articles of association of each company to provide such matters. C. A. 1862, Table A. (13), (14), (15); C. A. 1856, Table B. (11), (12), are applicable to this.

Under the bankruptcy law (32 & 33 Vict. c. 71, s. 17) all the property of a bankrupt is vested in his assignees, and it may be doubted whether under that alone the legal interest or power of disposition over shares of the bankrupt will not pass to the assignees independently or in spite of the regulations of the company.

By 12 & 13 Vict. c. 106, s. 128, it is provided that the Court of Bankruptcy may order all persons whose acts or consent is thereto necessary to transfer any of the stock of any public company standing in the name of a bankrupt in his own right into the name of his assignee.

If the assignees do not dispose of the bankrupt's shares, they will be considered to have repudiated them, and on the bankrupt's obtaining his certificate of discharge the legal interest reverts to the bankrupt. There is no direct decision upon this subject, but the following authorities relating to the liabilities of a discharged bankrupt member of a company seem to bear out this view. *South Staffordshire R. Co.* v. *Burnside*, 5 Ex. 129; 20 L. J., Ex. 120; *Martin's Anchor Co.* v. *Morton*, L. R., 3 Q. B. 306; 37 L. J., Q. B. 98; *General Estates Co., e.p. Hastie*, L. R., 7 Eq. 3; 4 Ch. 274; 38 L. J., Ch. 43, 233; *ante*, p. 128.

Where a bankrupt had an equitable right to have shares issued to him, and they were issued to him after his discharge, the legal interest did not pass to the assignee. *Minera Mining Co., e.p. Rymer*, 14 W. R. 276.

1 & 2 Vict. c. 110, s. 14 (*a*).

(5) Shares are made available to satisfy the claims of judgment creditors by 1 & 2 Vict. c. 110. Section 14 enacts, "That if any

(*a*) By 3 & 4 Vict. c. 82, s. 1, this is defined to extend to the debtor's interest, "whether in possession, remainder or reversion, and whether vested or contingent;" and "the dividends, interest or annual produce" of such shares.

person against whom any judgment shall have been entered up in any of her Majesty's superior courts at Westminster shall have any government stock, funds, or annuities, or any stock or shares of or in any public company in England (whether incorporated or not), standing in his name in his own right, or in the name of any person in trust for him, it shall be lawful for a judge of one of the superior courts, on the application of any judgment creditor, to order that such stock, funds, annuities, or shares, or such of them, or such part respectively as he shall think fit, shall stand charged with the payment of the amount for which judgment shall have been so recovered and interest thereon, and such order shall entitle the judgment creditor to all such remedies as he would have been entitled to if such charge had been made in his favour by the judgment debtor, provided that no proceedings shall be taken to have the benefit of such charge until after the expiration of six calendar months from the date of such order."

Section 15 is as follows: "And in order to prevent any person against whom judgment shall have been obtained from transferring, receiving, or disposing of any stock, funds, annuities, or shares hereby authorized to be charged for the benefit of the judgment creditor under an order of a judge, be it further enacted, that every order of a judge charging any government stock, funds or annuities, stock or shares, in any public company, under this act, shall be made in the first instance *ex parte*, and without any notice to the judgment debtor, and shall be an order to show cause only; and such order, if any government stock, funds or annuities, standing in the name of the judgment debtor, or in the name of any person in trust for him, is to be affected by such order, shall restrain the governor and company of the Bank of England from permitting a transfer of such stock in the meantime and until such order shall be made absolute or discharged; and, if any stock or shares of or in any public company, standing in the name of the judgment creditor in his own right, or in the name of any person in trust for him, is or are to be affected by any such order, shall in like manner restrain such company from permitting a transfer thereof; and that if after notice of such order to the person or persons to be restrained thereby, or, in case of corporations, to any authorized agent of such corporation, and before the same order shall be discharged or made absolute, such corporation, or person or persons, shall permit any such transfer to be made, then and in such case the corporation, or person or persons so permitting such transfer, shall be liable to the judgment creditor for the value or amount of the property so charged and so transferred, or such part thereof as may be sufficient to satisfy his judgment; and that no disposition of the judgment debtor in the meantime shall be valid or effectual as against the judgment creditor; and further, that unless the judgment debtor shall, within a time to be mentioned in such order, show to a judge of one of the said superior courts sufficient cause to the contrary, the said order shall, after proof of notice thereof to the judgment debtor, his attorney or agent, be made absolute; provided that any such judge shall, upon the application of the judgment debtor, or any person interested, have full power to discharge or vary such order, and to award such costs upon such application as he may think fit." Sect. 15.

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Form of order,

An order nisi was made in form, "unless cause be shown on the 14th of January instant." *Robinson* v. *Burbidge*, 9 C. B. 289; 19 L. J., C. P. 422.

For form of order absolute on stock standing in the name of trustees of which the debtor was tenant for life, see *Rogers* v. *Holloway*, 5 M. & G. 292; *Hulkes* v. *Day*, 10 Sim. 41.

in equity.

For forms of order made in equity in favour of creditors under decree of the Court of Chancery, see *Stanley* v. *Bond*, 7 Beav. 386; *Westly* v. *Westly*, 5 De G. & Sm. 516.

In one case the order was amended by making the charge expressly on the interest of the debtor only. *Birsted* v. *Wilkins*, 3 Hare, 235.

Effect of order.

Where stock was standing in the name of trustees to pay interest to E. C., "she to lay it out for the good of her children," the court would not enter into the question whether E. C. had any benefit. A charging order having been made in favour of her creditor: Alderson, B., The effect of the order is not to prevent the bank from paying the dividends to the trustees, it is for them afterwards to exercise a discretion as to what part of the fund they will pay over without considering the interests of the judgment debtor. If they have any doubt as to the extent to which the parties are respectively entitled to the money, they may apply to the Court of Chancery. *Fowler* v. *Churchill*, 11 M. & W. 57.

Where an order is made in favour of creditor of *cestui que trust*, it does not prevent the company paying dividends to the trustees, the legal owners who are answerable for the proper application of them. *Churchill* v. *Bank of England*, 11 M. & W. 323; *Birsted* v. *Wilkins*, 3 Hare, 235.

Priorities.

The effect of the charge dates from the time of the order nisi being granted, and takes priority of subsequent charges. *Haly* v. *Barry*, 3 Ch. 452; 37 L. J., Ch. 723, overruling *Watts* v. *Porter*, 3 E. & B. 743, and the grounds given for the decision of *Warburton* v. *Hill*, Kay, 470.

But it does not take priority over an equitable assignment made before the order *nisi*, but not completed by notice. *Scott* v. *Lord Hastings*, 4 K. & J. 633; *Crow* v. *Reeves*, L. R., 3 C. P. 264; 37 L. J., C. P. 124.

Jurisdiction.

In *Re Royal Bank of Australia*, *Re Connell*, 25 L. J., Ch. 649, an order was made to enforce a call in the winding-up of another company.

The judges of the Court of Chancery have no jurisdiction to make a charging order upon a judgment at law. *Myles* v. *Presland*, 4 M. & Cr. 431; *Hulkes* v. *Day*, 10 Sim. 41.

It seems that all companies governed by the Act of 1862 are public companies within the meaning of this act. *Macintyre* v. *Connel*, 1 Sim., N. S. 225; 20 L. J., Ch. 234; *Graham* v. *Connel*, 19 L. J., Ex. 361.

Mode of enforcing charge.

The proper mode of enforcing this charge is by a mortgagee's suit under which sale will be decreed. *Birsted* v. *Wilkins*, 3 Hare, 235; *Macintyre* v. *Connel*, 1 Sim., N. S. 225; 20 L. J., Ch. 284.

Appeal from and review of orders.

These orders form no part of the record, and therefore are not fit subjects for a writ of error notwithstanding s. 18. *Newton* v. *Boodle*, 6 C. B. 532; 18 L. J., C. P. 73; *Farmer* v. *Mottram*, 6 M. & Gr. 684.

The order must be made by a judge at chambers, and the court has no jurisdiction to set it aside till rule is made absolute. *Brown* v. *Bamford*, 9 M. & W. 42.

"It is clear that the original jurisdiction in this case belongs to the judge and not to the court, if the judge is desirous of referring the question to the court his course is to make the rule absolute, and then the party against whom it is made may apply to the court to set it aside."—*Per* Parke, B. See also *Fowler* v. *Churchill*, 11 M. & W. 323.

Where an order absolute had been obtained, an order nisi was obtained to set it aside on the ground that the property sought to be charged was not within the act. The judge considered the question of the validity of the charge doubtful, refused to go into that question, and discharged the order nisi. *Witham* v. *Lynch*, 17 L. J., Ex. 13; 1 Ex. 391. So *Graham* v. *Connel*, 19 L. J., Ex. 361, where there was a doubt whether a company whose shares were charged was within the act.

Where it was clear that the property sought to be charged was not within the act, the order was rescinded. *Morris* v. *Manisty*, 7 Q. B. 674.

A testatrix gave her estate including stock and shares on trust to pay debts and legacies, and as to the residue upon trust for the defendant and two others; and she directed her trustees to pay the legacies so soon after her decease as her means could be judiciously converted into cash. A charging order made on the stock and shares to the extent of the defendant's interest was discharged, as he had no interest in them, but only in their produce. *Dixon* v. *Wrench*, L. R., 4 Ex. 154.

Stock was settled on a man until he should become bankrupt or insolvent or assign; a charging order was made and was sought to be set aside by the trustees on the ground that the debtor had been insolvent; the creditor disputed the settlement. The court refused to go into the question as being proper for a court of equity to decide. *Rogers* v. *Holloway*, 5 M. & G. 292.

In *Cragg* v. *Taylor*, L. R., 1 Ex. 148; 35 L. J., Ex. 92; *Baker* v. *Tynte*, 29 L. J., Q. B. 233; 2 E. & E. 897, and *Fuller* v. *Earle*, 7 Ex. 796; 21 L. J., Ex. 314, the court would not discharge an order because the debtor was a trustee.

(6) In the earliest case on this subject, *Cuddee* v. *Rutter*, 5 Vin. Ab. 538, pl. 21, specific performance was refused in favour of the purchaser of South Sea Stock, as the purchaser could buy the same amount of stock in the market from some one else. But in *Dobret* v. *Rothschild*, 1 S. & S. 590, the specific performance of a contract for the sale of Neapolitan stock was ordered and the delivery of the certificates which would constitute the plaintiff proprietor of a certain quantity of stock.

It was decided in *Duncuft* v. *Albrecht*, 12 Sim. 189, that a contract for sale of a number of railway shares would be specifically enforced, though the particular shares were not specified.

In *Cheale* v. *Kinward*, 3 De G. & J. 27, a suit was brought to compel a person to accept railway shares on which nothing had been paid. Specific performance was resisted, first, on the ground that there being no money consideration, the agreement was *nudum*

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pactum; secondly, that the plaintiff having received no consideration the agreement could not have been enforced against him, and there was want of mutuality. Both objections were overruled.

Numerous cases on this subject have lately been decided, which will be found in the following chapter.

12 & 13 Vict. c. 106, s. 125. Order and disposition.

(7) Shares are within the 125th section of the Bankruptcy Act, 1849 (12 & 13 Vict. c. 106), so that if at the time of the bankruptcy of a member they are in his possession with the consent of the true owner they pass to his assignees. (See cases *infra.*) But if he holds them upon a *bonâ fide* trust, they are not considered within the mischief of the act, and do not pass to the assignee, though he may have perfect power of disposing of them. *Joy* v. *Campbell*, 1 Sch. & Lef. 328.

Shares are not within the order and disposition of trustees,

Shares bought with trust money placed in the name of one trustee, who executed a deed of declaration of trust, no notice being given to the company, did not pass to his assignee. *Pinkett* v. *Wright*, 2 Hare, 120; 12 L. J., Ch. 119.

Where shares were transferred to B. for sale, the proceeds to be appropriated to meet bills drawn on him by the assignor: on the bankruptcy of B. it was held that the holders of the bills had a right to have the shares sold and the proceeds applied in satisfaction of the bills. *Re Warwick, e.p. Brown*, 3 M. & A. 471; 7 L. J., B. 29.

Where a shareholder had sold his shares and had executed transfers which were void as being executed in blank; certificates had not been issued for any shares of the company; the shares were held not to be in the reputed ownership of the vendor. *Morris* v. *Cannan*, 31 L. J., Ch. 425. See also Bankrupt Law Consolidation Act, 1849, s. 133.

unless held on secret or fraudulent trusts.

Where the rules of an insurance company forbade any one to hold more than two shares, a shareholder took shares in some one else's name, holding two in his own name. It was held, that as the trust was secret, the shares passed to the assignee of the trustee. *Re Kidder, e.p. Burbidge*, 1 Dea. 131. See also *Re Kidder, e.p. Watkins*, 2 M. & A. 348; 5 L. J., B. 56. It is thought that these cases would not be followed, as the object of the rule of the company to have one person liable to contribute in respect of no more than two shares was fully carried out.

Where it was illegal to transfer shares, an equitable assignment did not take them out of the order and disposition of the bankrupt. *E.p. Neilson*, 3 D. M. & G. 556; 23 L. J., B. 12.

Equitable assignments require notice.

A mere equitable assignment will not take shares out of the reputed ownership of the shareholder, without notice being given to the company.

Where certificates of shares were deposited by way of pledge, no notice being given to the company, on the bankruptcy of the pledgor they passed to his assignees; *Re Grehan*, I. R., 1 Eq. 84; *Re Snow*, 28 L. T. 52; though in *Re Atkinson, e.p. Pooley*, 2 M. D. & D. 505, Sir John Cross thought mere want of notice was not sufficient proof of reputed ownership. In that case actual notice had been given. *Cummings* v. *Prescott*, 1 Y. & C., Ex. 488.

Where the bankrupt, who was a director, mortgaged his shares, but stipulated that no notice should be given to the company, the shares were held to be within his order and disposition. *E.p. Nutting, Re Hamlet*, 2 M. D. & D. 302.

In *Re Lawrence, e.p. Bowring*, De G. 269, shares in a waterworks company, and *Re Dilworth, e.p. Lancaster Canal Co.*, 1 M. & B. 94, a canal company's shares were held to be in the order and disposition clause, as being personal estate.

Shares in a gas company, which had been assigned without notice to the company, were held to be in the order and disposition of a bankrupt. *Re Lashmeer, e.p. Vallance*, 2 Dea. 354.

What amounts to notice.

If, however, notice is given to the company, an equitable assignment is good against the creditors. And so where R. gave certificates and memorandum of charge to his sister, who delivered them back in a sealed packet, there was sufficient assignment. *Re Richardson, e.p. Richardson*, 3 Dea. 196; 8 L. J., B. 27.

It did not matter that the certificates remained in the possession of the mortgagor. *Deering* v. *Hibernian Joint Stock Banking Co.*, 16 W. R. 578.

The fact that the assignor is director, and has no other shares than sufficient to qualify himself to act as director, will not invalidate the mortgage. *E.p. Masterman, Re Litt*, 4 D. & Ch. 751.

L. lent money to P. to enable him to purchase shares to qualify himself as director. The shares were assigned equitably to L. as security for the loan. No notice was given till five days before P. committed an act of bankruptcy. The shares did not pass to P.'s assignees. *Re Pearse, e.p. Littledale*, 6 D. M. & G. 714.

The fact that mortgagor of shares was director did not take them out of his order and disposition. *Re Hamlet, e.p. Nutting*, 2 M. D. & D. 302.

The contrary was held in *Re Medley, e.p. Harrison*, 3 M. & A. 506; 7 L. J., B. 48.

Where notice of an equitable assignment was given to one director, who communicated it to the board on the morning of the day on which the act of bankruptcy was committed, there was sufficient notice. *Re Richardson, e.p. Richardson*, 3 Dea. 496.

The fact that mortgagor was secretary of the company was not sufficient to impute notice. *Re Sketchley, e.p. Boulton*, 1 De G. & J. 163.

Where the directors and secretary of company joined in depositing their shares with a bank, the shares of the secretary were not in his order and disposition. *Re Shelley, e.p. Stewart*, 34 L. J., B. 6; 5 N. R. 200.

Where a shareholder agreed with his company that his shares should be a security for advances, the charge was held good against his assignees, "as where the party to give and receive notice is the same, notice is assumed to have been given." *Deering* v. *Hibernian Joint Stock Banking Co.*, 16 W. R. 578, overruling on the point *Re Dilworth, e.p. Lancaster Canal Co.*, 1 M. & B. 94, and *Nelson* v. *London Assurance Co.*, 2 S. & S. 293. See also *Elder* v. *Maclean*, 3 Jur., N. S. 283; *Pinkett* v. *Wright*, 2 Hare, 120; 12 L. J., Ch. 119. And therefore a lien of a company, under 7 Geo. 4, c. 76, provided by deed of settlement, was good against assignees in bankruptcy. *Re Butterworth, e.p. Plant*, 4 D. & Ch. 163.

Statutes applicable to shares.

(8) Dealers in shares are brokers within 6 Anne, c. 16. *Smith* v. *Lindo*, 5 C. B., N. S. 587; 27 L. J., C. P. 335.

Shares in a bank have been held to be stock within the meaning of the Trustee Act, 1850. *Re Angelo, e.p. Frith*, 5 De G. & S. 278.

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Stock of a railway company was held to be stock within the meaning of the Lunacy Regulation Act, 1853. *Re Ives*, 32 L. J., Ch. 673.

Railway shares were held to be property which would qualify the holder to become bail. *Pierrepoint* v. *Brewer*, 10 Jur. 79.

In *Att.-Gen.* v. *Higgins*, 2 H. & N. 780 ; 26 L. J., Ex. 403, it was held that shares of a Scotch railway company belonging to a testator domiciled in England were liable to pay Scotch probate duty.

Preference shares are "stock" within the meaning of 13 & 14 Vict. c. 97, schedule. *Ulverstone and Lancashire R. Co.* v. *Commissioners of Inland Revenue*, 3 H. & C. 855.

Statutes not applicable.

A sale of railway scrip is not a sale of "goods, wares or merchandise," within the meaning of the exemption from stamp duty in the Stamp Act, 55 Geo. 3, c. 184. *Knight* v. *Barber*, 16 M. & W. 66 ; 16 L. J., Ex. 18.

Shares are not goods and chattels within the 17th section of the Statute of Frauds. *Tempest* v. *Kilner*, 3 C. B. 249 ; *Watson* v. *Spratley*, 10 Ex. 222 ; 24 L. J., Ex. 53 ; *Humble* v. *Mitchell*, 11 A. & E. 205 ; *Bowlby* v. *Bell*, 3 C. B. 284 ; *Duncuft* v. *Albrecht*, 12 Sim. 189.

Shares are not "goods or commodities" within the Bankruptcy Consolidation Act, 1849, s. 65. *Re Cleland*, L. R., 2 Ch. 466.

Certificates of railway stock are not "goods or documents of title to goods" within the meaning of the Factors Act, 5 & 6 Vict. c. 39. *Freeman* v. *Appleyard*, 1 N. R. 30.

Rights between successive owners.

40. As between parties successively interested in shares, the dividends belong to the person entitled at the time of the declaration of the dividend (1), and calls are to be paid by the equitable owner at the time they are made payable (2).

Dividends and accumulations.

(1) The older cases on the subject are somewhat conflicting.

In the cases, *Ward* v. *Comb*, 7 Sim. 634 ; *Brander* v. *Brander*, 4 Ves. 800 ; *Paris* v. *Paris*, 10 Ves. 185 ; *Witts* v. *Steere*, 13 Ves. 363, bonuses were invested for the benefit of the whole estate. But in *Barclay* v. *Wainwright*, 14 Ves. 66 ; *Price* v. *Anderson*, 15 Sim. 473 ; *Preston* v. *Melville*, 16 Sim. 163, the bonus was paid to the tenant for life.

In *Plumbe* v. *Neild*, 29 L. J., Ch. 618, V. C. Kindersley thought that a sum called bonus was in fact only a dividend and belonged to the tenant for life.

In *Hollis* v. *Allan*, 12 Jur., N. S. 638, V. C. Kindersley decided that certain payments called bonuses were really only dividends and not within a proviso in a settlement of shares that bonuses should be invested.

A bonus was declared before the death of a testator, but he died before the time at which it was made: it belonged to his estate. *Lock* v. *Venables*, 29 L. J., Ch. 179 ; 27 Beav. 598.

Shares were settled on A. for life and then over ; it was held, that

a dividend declared before A.'s death, but not payable till afterwards, belonged to A.'s estate. *Wight* v. *Tuckett*, 1 J. & H. 266.

Where a testatrix died after a dividend was declared but before it was payable, it belonged to her general estate. *De Gendre* v. *Kent*, L. R., 4 Eq. 283. V. C. Wood said, "as soon as the dividend was declared, although payment for the convenience of the company was postponed until the following January, from that moment the testatrix became entitled to it, although she could not have recovered it."

A bonus falling in during the infancy of a person interested went in the same way as accumulations of income. *Cummings* v. *Boswell*, 2 Jur., N. S. 1005.

Dividends declared after the death of a testator, though not out of profits made during his lifetime, belong to the legatee. *Bates* v. *Mackinley*, 31 L. J., Ch. 388; 31 Beav. 280.

In the case of a specific legacy of bank stock, if the testator had died a few days before the dividend day, the legatee would take the dividend, although payable in respect of profits earned during the testator's life. *Clive* v. *Clive*, 1 K. 600; 23 L. J., Ch. 681.

Where part of the profits accruing during the life of a tenant for life are capitalised by the company, he has no right to have the loss of income made good by the remainderman. *Stroud* v. *Gwyer*, 28 Beav. 130.

For a long series of years the manager of a company had fraudulently retained large sums, so that the dividends declared were less than they would have been; after his death the company recovered a considerable sum in respect of his defalcations, and therefore declared a large bonus. A testator had bequeathed shares to his widow for life with remainder over. It was held, that the tenant for life was entitled both against the estate of the testator and the trust estate to the whole of the bonus. *Maclaren* v. *Stainton*, 3 D. F. & J. 202; 30 L. J., Ch. 723. This was followed in *Edmonson* v. *Croswaite*, 34 Beav. 30.

Where shares in trust are sold and the investment changed, no allowance is made to the tenant for life, if sold just before a dividend is to be paid, nor has he to account for dividends received just before sale. *Scholfield* v. *Redfern*, 32 L. J., Ch. 627; 2 Dr. & S. 182; *Freeman* v. *Whitbread*, L. R., 1 Eq. 266; 35 L. J., Ch. 137.

Exception under special regulations.

This rule can be controlled by the instrument governing the company. Thus, where the deed of settlement provided that the shareholder was not to receive any dividend after the period at which he ceased to be a proprietor of shares, but the dividends on such shares were to continue in suspense until some other person should have become proprietor of them. A shareholder bequeathed his shares to one for life, and died after dividends had been made payable. The tenant for life was held entitled to the dividends, as they had not been actually paid. *Clive* v. *Clive*, 1 K. 600; 23 L. J., Ch. 981.

Returned capital.

The tenant for life is not entitled to anything in the nature of returned capital. Where a company was bought up by another company and the shareholders received, in addition to shares in the continuing company, 50*l.* per share as proportion of a reserve fund, the tenant for life of some of the shares in the old company was not entitled to receive the 50*l.* per share as income. *Nicholson* v. *Nicholson*, 30 L. J., Ch. 617.

Par. 40 (1). Apportionment (4 & 5 Will. 4, c. 22, s. 2).

Dividends, however, are made apportionable by 4 & 5 Will. 4, c. 22, s. 2, where they are made payable at fixed periods. Therefore, where the deed of settlement of a company provided that the dividends were to be declared half-yearly and made payable in the months of April and October in each year; it was held, that the executrix of the tenant for life of shares in the company was entitled to have the dividends for the half-year in which she died apportioned. *Re Maxwell's Trusts*, 32 L. J., Ch. 333. See *Plumbe* v. *Neild*, 29 L. J., Ch. 618.

So, also, where the dividends were to be declared at the half-yearly meetings of the company and paid within twenty-one days from the time of their being declared. *Hartley* v. *Allen*, 27 L. J., Ch. 621; 4 Jur., N. S. 500.

The period for which apportionment is to be taken is from the time of one payment to the time of the next payment. *Ib.*

A sum derived from the sale of new shares was not apportionable. *Ib.*

Calls.

(2) A notice of a call was given to shareholders that part was to be paid on the 1st February, part on the 1st April. A shareholder died between these dates. It was held that the legatee of her shares ought to pay the latter instalment, her general estate the former. *Addams* v. *Ferick*, 28 L. J., Ch. 594; 5 Jur., N. S. 588.

Payments necessary to constitute a shareholder a member and in the nature of subscription to capital to enable the company to start its business are not payable by the legatee, but out of the testator's estate. *Day* v. *Day*, 29 L. J., Ch. 466; *Armstrong* v. *Burnett*, 24 L. J., Ch. 473; 28 Beav. 424. In both these cases the legatee had to pay calls.

In re Box's Trusts, 33 L. J., Ch. 32; 1 H. & M. 552, calls were paid out of the testator's general estate on account of the particular frame of his will.

CHAPTER VII.

CONTRACTS RELATING TO THE SALE AND PURCHASE OF SHARES.

Introductory statement.

THE sale and purchase of shares is not generally effected by means of a direct contract between the transferor and transferee, but by means of a number of subsidiary contracts to which other persons, members of the stock exchange, are parties, and which are regulated by the rules and customs of the stock exchange.

A person wishing to sell and transfer shares in a company (who may be denominated the original vendor) instructs a broker, a member of the stock exchange, to sell his shares; the broker then makes a contract (*a*) on behalf of his principal with a jobber, a member of the stock exchange; the effect of which is, that the jobber will on a certain day, called the next settling day, procure responsible persons to whom the shares are to be transferred, or in default accept a transfer himself; that the purchase-money is then to be paid the vendor, who makes proper transfers to the real purchasers.

A person wishing to buy and hold shares in the company (who may be denominated the ultimate purchaser) instructs a broker to buy shares for him; his broker accordingly enters into a contract (*a*) on his behalf with a jobber, that the jobber will on the next settling day procure the specified number of shares

(*a*) *Stamps.*] — These contracts are evidenced by contract notes which require a penny stamp (23 & 24 Vict. c. 111, s. 1). Section 7 of that statute enacts, "The stamp duty on contract notes may be denoted either by impressed or adhesive stamps, and the said commissioners shall provide stamps of both descriptions; and in any case where a contract note is made, and the same is not written on an impressed stamp, there shall be affixed thereon a proper adhesive stamp; and every person who shall make or sign a contract note to which an adhesive stamp shall be affixed shall effectually cancel and obliterate the stamp by writing upon or across it his name or the name of his firm, or the initials thereof respectively, and by adding thereto the date of such

to be transferred to the ultimate purchaser, who will accept the transfer and procure his name to be registered as shareholder in respect of the shares.

Other contracts are entered into between the jobbers and other members of the stock exchange relating to the purchase and sale of shares in the same company for the same settling day; and on the day before the settling day, the persons from whom and to whom transfers of the shares in the company are actually to be made, is arranged between the members of the stock exchange, and the name of the ultimate purchaser is given to the broker of the original vendor, who executes a proper transfer to the transferee, and receives from him the price the latter has agreed to pay for the shares; and he pays or receives from the jobber with whom he contracted, the difference between that and the price he contracted to sell his shares for.

The effect of this is, that all the intermediate contracts are fulfilled, the liabilities of the intermediate persons wiped out, and a new contract is made. There remains a liability of the vendor for any matter that may prevent the purchaser becoming a complete member, and a liability on the purchaser to indemnify the vendor from loss in respect of the shares by reason of neglect on the part of the former in getting himself registered as a member.

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41. Strangers employing members of a stock exchange to buy or sell shares for them on the stock exchange are affected with notice of its rules and customs (*a*) existing at the time

cancelling, and so and in such manner that the said stamp cannot be used upon or for any other document or writing; and if any person shall make or sign any contract note by this act chargeable with stamp duty without the same being duly stamped to denote the said duty; or shall refuse or neglect to cancel and obliterate as aforesaid any adhesive stamp affixed thereon, he shall forfeit the sum of twenty pounds; and no charge for brokerage, commission, agency, or otherwise, made or to be made by any broker, agent, or other person, in or about the sale or purchase mentioned or referred to in any contract note made or signed by him, shall be lawful unless such contract note shall be duly stamped, and the stamp thereon, if adhesive, properly cancelled."

(*a*) The rules of the London Stock Exchange relating to these matters are set out in the note at end of this Chapter, *post*, p. 173.

of giving their orders (1), which are incorporated into the contracts they make (2).

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(1) Strangers are not bound by any *ex post facto* rules made by the committee of the stock exchange, nor by any act in the nature of a decision by the committee, which may bind their agent as such member. So where a person innocently sold shares in a company of which he held forged certificates, and the broker had, in accordance with a decision of the committee, paid the purchaser the market price of shares, which had in the meanwhile gone up, the broker could only recover the amount of the purchase-money from his principal. *Westropp* v. *Solomon*, 8 C. B. 345; 19 L. J., C. P. 1.

Strangers employing members are bound by rules of stock exchange.

(2) It has been thought that persons not members of the stock exchange were not bound by its rules and customs, though they employed a member as their agent in the matter, as the rules were considered unreasonable and illegal, and that by so doing they were not affected with notice of such rules and customs. It is, however, now clearly settled, that they are bound by such rules and customs, which are incorporated into their contracts. *Shepperd* v. *Murphy*, 16 W. R. 948; I. R., 1 Eq. 490; *Grissel* v. *Bristowe*, L. R., 4 C. P. 36; 38 L. J., C. P. 10; L. R., 3 C. P. 137; 37 L. J., C. P. 103; *Coles* v. *Bristowe*, L. R., 4 Ch. 3; 38 L. J., Ch. 81; *Hodgkinson* v. *Kelly*, L. R., 6 Eq. 496; 37 L. J., Ch. 837; *Cruise* v. *Paine*, 38 L. J., Ch. 225; L. R., 4 Ch. 441; *Whitehead* v. *Izod*, L. R., 2 C. P. 228; 36 L. J., C. P. 113. See also *Taylor* v. *Stray*, and other cases on the liability of principals to their brokers, *infra*.

"The plaintiff may have known nothing of the usages of the stock exchange, his broker may have acted contrary to or exceeded his authority, the contract may have been one which, if so minded, the plaintiff might have been justified in repudiating; but when the contract is sought to be enforced against the defendants, their liability can only be carried to the extent to which they consented to be bound." *Per* Cockburn, C. J., *Grissel* v. *Bristowe*, L. R., 4 C. P. 49; 38 L. J., C. P. 18.

So "a person who employs a broker must be supposed to give him authority to act as other brokers do. It does not matter whether or not he himself is acquainted with the rules by which brokers are governed." *Per* C. J. Littledale, *Sutton* v. *Tatham*, 10 Ad. & El. 27; 8 L. J., Q. B. 207.

Legality and reasonableness of usages.

"There can be nothing unreasonable any more than unlawful in a person, to whom it is proposed to purchase a particular thing, saying, 'I will agree to buy, provided that if, when the time for completing the contract arrives, it should suit me to substitute another buyer able and willing to take my place and perform the contract, I shall be at liberty to do so.' What would not be unreasonable in a single buyer would not be so in a class of persons dealing in a particular commodity; and if from a long series of dealings a habit or usage of always dealing on such an understanding, even when not expressed, should become established, such a usage would no more be unreasonable than such a stipulation would be if introduced expressly into each particular contract. Besides, a usage founded on the general convenience of all parties engaged in a particular department of business can never be said to be unreasonable.

Par. 41 (2).

"Now the intervention of jobbers in these transactions is obviously for the advantage both of sellers and buyers, who are thus brought readily into contact, and there is no hardness or injustice on the seller in the substitution of another buyer. All that the seller desires is to find a customer who will pay the price, accept the shares, and relieve him from all further liability in respect of them." "On the other hand, it would certainly be a considerable hardship on the jobber if, for the small profit realized on the resale of stock or shares, he were to be held responsible in respect of any nonfulfilment of any part of the contract when the matter had passed out of his hands, by the seller assenting to complete the transaction with the substituted buyer. Far, therefore, from being unreasonable, the usage appears to be fair and equitable with reference to the interests of all parties concerned." *Per* Cockburn, C. J., *Grissel* v. *Bristowe*, L. R., 4 C. P. 47; 38 L. J., C. P. 17.

"This practice affords to the public the very great advantage of being enabled by means of a stockbroker and jobber to buy or to sell at any moment any quantity of stock, or any number of any description of shares at the market price of the day, and conclude the transaction at the latest on the settling day; whereas, without such a practice, every one, having any given amount of stock, English, foreign or colonial, or of debentures, or shares in railways or other joint stock companies, to buy or to sell, must wait until a seller or buyer could be found to sell or to buy the exact quantity of stock or of shares which is to be parted with or acquired—a state of things which in this country, where some hundreds of these purchases and sales are effected every day, would be found intolerable, and would speedily demand a remedy, than which no better could be devised than this practice so long established." *Per* Kelly, C. B. *Ib.*

Where a broker sued for indemnity against his principal, Willes, J., said, "It is familiar law that a principal who employs an agent to purchase goods for him in a particular market is to be taken to be cognizant of, and is bound by, the rules which regulate dealings therein." *Whitehead* v. *Izod*, L. R., 2 C. P. 238; 36 L. J., C. P. 114. So Montague Smith, J., said, "It was an implied condition of that employment that the defendant should be bound by the rules and regulations which bind all persons dealing on the stock exchange." *Ib.*

Evidence of usage.

The written contract for sale of shares specified the time of payment, parol evidence was admitted to show a usage that delivery was concurrent with the time of payment. *Field* v. *Lelean*, 6 H. & N. 617; 30 L. J., Ex. 168.

Jobber's contract.

42. A stock jobber purchasing shares in accordance with the rules of the stock exchange contracts to procure a person, to be approved by the vendor, who will take a transfer of the shares on the next settling day, and, in default of procuring such person, to receive a transfer himself (1).

His liabilities

(1) L. C. Cairns states the effect of the contract thus: "The contract

of the jobber is that at the settling day he will either take the shares himself, in which case he would be bound to accept and register a transfer and to indemnify, or he will give the name of one or more transferees' names to which no reasonable objection can be made, who will accept and pay for the shares. The jobber may perform either alternative." *Coles* v. *Bristowe*, L. R., 4 Ch. 11; 38 L. J., Ch. 81. are wiped out on procuring a transferee.

C. J. Cockburn describes such a contract thus: "The contract as interpreted by the usage was, that the defendants, the first buyers, were to be at liberty to transfer the contract with all its rights and obligations to any sufficient buyers who would take it upon them with all its incidents." *Grissel* v. *Bristowe*, L. R., 4 C. P. 51; 38 L. J., C. P. 19.

Byles, J., says the jobber "enters into a contract to find a man who will consent to be transferee of the shares and to take upon himself all the responsibilities which attach to that character." *Torrington* v. *Lowe*, L. R., 4 C. P. 34; 38 L. J., C. P. 121. Brett, J., said, "The contract was to accept the shares and pay the price on the settling day, or in the interim to give the name of a competent transferee." *Ib.*

Again, Cockburn, C. J., described the position of a jobber thus:—"He is or may become a sort of middleman or provisional purchaser and vendor for both parties respectively, and the advantage of employing him is this, that he at the same time and place provides a ready or rather instant market both for the buyer and seller. In ordinary cases he does not become the ultimate purchaser, and the shares may and do change hands many times before the ultimate purchaser is reached; and they may even pass through the hands of several jobbers in succession." "When the jobber pays the money, and gives the name of his nominee to the seller's broker, his duty to the seller is at an end. If, indeed, the jobber fail to produce a name according to the usage, he becomes the ultimate purchaser, and must himself take the shares and register them in his own name." *Grissel* v. *Bristowe*, L. R., 3 C. P. 137; 37 L. J., C. P. 103.

Accordingly, in those cases the jobber was held to be discharged from liability after the vendor had delivered the shares to a nominee.

See further the remarks of the Master of the Rolls, *Hodgkinson* v. *Kelly*, L. R., 6 Eq. 496; 37 L. J., Ch. 837.

The name of G. was given as the ultimate buyer, no objection was taken to his name, and a transfer was executed to him. It was afterwards discovered that the brokers of G. had really been instructed to buy by S., who had paid G. a sum of money to take the shares. The jobber, who had bought from the vendor, was not cognizant of those circumstances. An action for indemnity could not be maintained against him. *Maxted* v. *Paine* (2), L. R., 4 Ex. 203; 38 L. J., Ex. 129.

An action for indemnity was maintained against a jobber who had given the name of a person not bound to take shares. *Maxted* v. *Paine* (1), L. R., 4 Ex. 81; 38 L. J., Ex. 67. Default in procuring transferee.

Independently of the custom of the stock exchange, the delivery and acceptance of a transfer operates as a fresh contract. Where G.'s name was given to the vendor without his consent, but he accepted the transfer, he was held liable in a suit for specific perform- Contracts without the stock exchange.

Par. 42 (1).

ance and indemnity. *Shepherd* v. *Gillespie*, L. R., 3 Ch. 764; 38 L. J., Ch. 67.

In a case not governed by the rules of the stock exchange, where shares were sold to F. and resold on his behalf by the same broker, the name of F. not being disclosed to the vendor, who executed a transfer to and received the purchase-money from the new purchaser, the contract with F. was cancelled. *Shaw* v. *Fisher*, 5 D. M. & G. 596.

Shares were transferred by deed from W. to K. K. accepted the shares at the request of S. and as trustee for him, and was told by him that the purchase-money had been paid. The deed acknowledged the receipt of the purchase-money by W. from K. The purchase-money not having been paid, W., being precluded by his acknowledgment from recourse to law, recovered his purchase-money from K. in equity, the relationship of vendor and purchaser having been constituted by the deed. *Wilson* v. *Keating*, 4 De G. & J. 588.

Special contract.

If there is a special contract, the jobber's liability may remain. Where therefore the shares were sold to a jobber "with registration guaranteed," he was decreed to indemnify the seller, though he had executed a transfer to a nominee. *Cruise* v. *Paine*, 38 L. J., Ch. 225; L. R., 4 Ch. 441.

Intermediate jobbers.

The vendor has never any privity of contract with any person except the jobber, who contracts to give him a name, and the person whose name is ultimately given to him. T. sold shares to a jobber, P. P. sold to L., and L. to C. C.'s name was given to T., and transfer from T. to C. executed. T. sued L. for indemnity without success. *Torrington* v. *Lowe*, L. R., 4 C. P. 26; 38 L. J., C. P. 121.

Vendor's contract.

43. The vendor contracts that he will on the settling day deliver to the purchaser, on receipt of the purchase-money, the legal title to the number of shares contracted to be sold (1); the duty of procuring himself to be made a complete member by registration being cast on the purchaser (2).

Delivery.

(1) A tender of a transfer from a third person of the number of shares contracted to be sold was held sufficient to support an action for indemnity. *Rudge* v. *Bowman*, L. R., 3 Q. B. 689; 37 L. J., Q. B. 193. Held sufficient to support an action for the purchase-money. *Taylor* v. *Stray*, 2 C. B., N. S. 175; 24 L. J., C. P. 207.

In a suit for specific performance and indemnity, a purchaser was not allowed to repudiate his contract on the ground that the vendor tendered an assignment of shares from some one else. *Paine* v. *Hutchinson*, L. R., 3 Ch. 388; 37 L. J., Ch. 485.

Shares were sold at an auction on behalf of S. F. purchased them. They were afterwards sold on his behalf to C. F. executed a transfer to C. as agent of F. C. failed to get the shares registered in his name. It was held that S. could not get specific performance or in-

demnity from F., and that it was a complete answer to a suit for that purpose that he could not make a good title to the shares. *Shaw* v. *Fisher*, 5 D. M. & G. 596.

The delivery of forged scrip is not delivery of what was contracted to be sold. *Westrop* v. *Solomon*, 8 C. B. 345; 19 L. J., C. P. 1.

Title.

In a suit for specific performance of a contract to take shares in a cost-book mining company, entries in the cost book were not sufficient evidence of title. *Curling* v. *Flight*, 17 L. J., Ch. 359; 2 Ph. 613.

In an action for non-acceptance of shares brought by the assignees in bankruptcy of the vendor, it was held that the entry of the plaintiffs' names in the transfer book of the company was not sufficient evidence of title in them. They ought to have a certificate in their own names, or at least endorsed to them. *Hare* v. *Waring*, 3 M. & W. 362.

But an action for return of purchase-money on the ground of non-delivery, no certificates having been issued to the vendor, failed. *Hunt* v. *Gunn*, 13 C. B., N. S. 226; 2 N. R. 28.

Vendor does not guarantee registration.

(2) Where the directors had power to refuse to allow transfers, and they refused all transfers after a certain date on account of the circumstances of the company, delivery of transfers was held sufficient to support an action for the purchase-money. *Taylor* v. *Stray*, 2 C. B., N. S. 175; 24 L. J., C. P. 287. See also *Stray* v. *Russel*, 1 E. & E. 188. But if such consent is refused through default of the vendor, there is no delivery. *Kempson* v. *Saunders*, 2 Car. & P. 266; 4 Bing. 5.

Where contracts for sale of shares were entered into before a petition was presented for a compulsory winding-up, but transfers were made after, the brokers recovered what they had paid on account of their principals to recoup the vendors on calls. *Chapman* v. *Shepherd; Whitehead* v. *Izod*, L. R., 2 C. P. 228; 36 L. J., C. P. 113. The vendor recovered indemnity for calls in a similar case. *Rudge* v. *Bowman*, L. R., 3 Q. B. 689; 37 L. J., Q. B. 193.

Where the directors of a company refused their assent to a transfer, as the vendor was taking legal proceedings against the company, the purchaser recovered his purchase-money. *Wilkinson* v. *Lloyd*, 7 Q. B. 27; 9 Jur. 328. Compare *Remfrey* v. *Butler*, E. B. & E. 887, *post*, p. 168.

Where the official liquidator in a company, wound up after a sale of shares had been made, refused to sanction the transfer or register the purchasers as members, there being a power in the directors to refuse to accept persons as members, the court refused to decree specific performance and indemnity in favour of the vendor. *Bermingham* v. *Sheridan*, 33 L. J., Ch. 571; 33 Beav. 660.

Purchaser's contract.

44. The purchaser contracts that he will on the settling day pay the purchase-money, receive a transfer, and procure the shares to be registered either in his own name or in that of an assignee, and indemnify the person with whom his original

Par. 44. contract was made and his transferor from all loss in respect of shares from the times of their respective contracts (*a*).

Vendor's remedies.

45. The vendor is entitled to recover his purchase-money (1), to be indemnified in an action at law for losses he has already incurred through the non-fulfilment of the contract (2), or he may resell the shares and recover damages for the loss sustained (3). In equity he is entitled to a decree for specific performance of the contract and indemnity against past and future losses (4). These remedies may be excluded by special contract (5), or lost by fraud on the part of the vendor (6).

Actions for purchase-money.

(1) A declaration in an action to recover amount of purchase-money, which did not aver that the plaintiff was willing and ready to transfer, was held bad. *Hanneric* v. *Goldney*, 11 M. & W. 849.

This is not necessary, however, where the purchaser has refused to perform his part of the contract. *Shaw* v. *Rowley*, 16 M. & W. 810.

Suit in equity.

Where the transferor had precluded himself from suing at law for the purchase-money by having acknowledged the receipt in the deed of transfer, he recovered in equity. *Wilson* v. *Keating*, 4 De G. & J. 588.

Remedy at law for indemnity.

(2) Where a vendor had executed a blank transfer to the purchaser, who might have then procured his name to be put on the register of shareholders, it was held that there was an implied contract to indemnify the plaintiff against calls made on the shares while they remained the property of the defendant. *Walker* v. *Bartlett*, 18 C. B. 845; 25 L. J., C. P. 263.

That there is an implied contract for indemnity against calls appears from *Grissel* v. *Bristowe*, L. R., 3 C. P. 112; 4 C. P. 36; 37 L. J., C. P. 89; 38 L. J., C. P. 10; *Maxted* v. *Paine*, L. R., 4 Ex. 81; 38 L. J., Ex. 41.

However, in a case where a purchaser had received a transfer and certificate of shares from a person to whom his name had been given, but never executed the transfer; an action for indemnity was brought by the vendor; the judges were equally divided in opinion as to whether the action could be maintained. Channell and Cleasby, BB., were of opinion that there was no contract between the ultimate purchaser and original vendor. Kelly, C. B., and Pigott, B., were of contrary opinion. The junior judge withdrew his opinion, and judgment was given for the plaintiff. *Davis* v. *Haycock*, 38 L. J., Ex. 155.

(*a*) For cases in support of this paragraph, see notes to the next paragraph.

A bill for specific performance and indemnity against a purchaser was dismissed, as the bill alleged that he entered into a contract at the date and in the terms of the jobber's contract, and that contract was not proved. *Hawkins* v. *Maltby* (1), L. R., 3 Ch. 188; 37 L. J., Ch. 58.

It is thought that the decision will ultimately stand, but in any event the remedy in equity will probably be preferred, as it is more extensive.

Pleadings.

For form of declaration, see *Grissel* v. *Bristowe*, L. R., 3 C. P. 112; *Walker* v. *Bartlett*, 25 L. J., C. P. 156.

A count for money paid is not proper. *Sayles* v. *Blane*, 14 Q. B. 209; 19 L. J., Q. B. 19.

Measure of damages on resale.

(3) The measure of damages in an action of this description is the difference between the contract price and the market price on the day of sale. *Stewart* v. *Cauty*, 8 M. & W. 160.

Such sale must be within a reasonable time. Seven days was held by the jury reasonable.

In *Pott* v. *Flather*, 5 R. C. 85, the defendant purchased scrip on the 20th October, which were not issued till the 24th. On the evening of the 21st, he gave notice he would not complete; the shares had then fallen, and continued to fall; the plaintiff sold on the 6th December. The measure of damages was the difference between purchasing price and value on the 22nd October. It would seem to have been the duty of plaintiff to sell forthwith.

In *Barned* v. *Hamilton*, 2 R. C. 624, also the measure of damages was the difference between the purchasing price and the market price on the day of repudiation; it being left to the jury to determine the time of repudiation.

Nature of remedy in equity.

(4) Where a purchaser had received a transfer which he had not himself executed, and paid the purchase-money, but the shares had been allowed to remain in the name of the vendor, who had therefore to pay calls, V. C. Knight Bruce made a decree against the purchaser, saying, "The defendant must pay the calls that have been made since the sale. He must indemnify the plaintiff against all future calls in respect of the shares, and must take proper measures to procure himself to be registered." *Wynne* v. *Price*, 3 De G. & Sm. 315. This case has been followed ever since.

Indemnity.

Future calls.

For form of decree, see further *Evans* v. *Wood*, L. R., 5 Eq. 9; 37 L. J., Ch. 159; *Shepherd* v. *Gillespie*, L. R., 5 Eq. 293; 37 L. J., Ch. 335; affirmed L. R., 3 Ch. 764; *Sheppard* v. *Murphy*, 16 W. R. 948; I .R., 1 Eq. 190; *Hodgkinson* v. *Kelly*, L. R., 6 Eq. 496; 37 L. J., Ch. 837.

The same form of decree was followed in a case where the plaintiff died insolvent and the executors revived. *Cruise* v. *Paine*, L. R., 6 Eq. 461; 37 L. J., Ch. 711; L. R., 4 Ch. 441; 38 L. J., Ch. 225.

In *Paine* v. *Hutchinson*, L. R., 3 Ch. 335; 37 L. J., Ch. 485, a slight variation was made to meet the circumstance that the vendor was not the registered owner.

Where the purchaser disputed his liability to take the shares, and a call was made bearing 11 per cent. interest, which the vendor had ultimately to pay, on recovering indemnity he was only allowed 4 per cent. *Hawkins* v. *Maltby* (2), L. R., 6 Eq. 505; 38 L. J., Ch. 313.

Contracts excluding vendor's usual rights.

(5) In *Humble* v. *Langston*, 7 M. & W. 577, it was decided that the purchaser was not bound to indemnify the vendor for calls made after he had parted with his interest, as the vendor had executed a transfer in blank, and therefore the meaning of the contract must have been that the purchaser might assign his contract before getting himself registered.

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The purchaser of scrip certificates in a proposed railway company was not bound, in the absence of special contract, after the formation of the company to take a transfer of the corresponding shares, or to indemnify the vendor against calls. *Jackson* v. *Cocker*, 4 Beav. 59.

Conduct excluding vendor of his remedy.

(6) A plea to an action for indemnity that the plaintiff knew the circumstances of the company which the defendant did not, was not sufficient, as it did not allege that the plaintiff knew the defendant was ignorant. *Rudge* v. *Bowman*, L. R., 3 Q. B. 689.

Compare *Bayley* v. *Wilkins*, 7 C. B. 886; 18 L. J., C. P. 273, *post*, p. 170.

A director who has special means of knowing that shares are worthless, and sells to get rid of them, is guilty of fraud so as to vitiate the contract. *M'Allum* v. *Turton*, 2 Y. & J. 183.

Purchaser's rights.

46. If the shares are not delivered at the proper time, the purchaser can repudiate the transaction and recover what he may have paid on the purchase (1); if the shares have increased in value, he can recover the difference of price as damages (2). If he has been induced to enter into the contract through the fraud of the vendor, he can have the whole contract set aside (3), or he can recover damages in an action at law (4). And he is entitled in equity to a decree for specific performance of the contract (5).

Actions for return of purchase-money.

(1) Where the vendor had innocently sold forged scrip the purchase-money was recovered. *Westropp* v. *Solomon*, 8 C. B. 345.

Where shares in a dissolved company were sold. *Watkins* v. *Hurtley*, 2 Car. & P. 410.

Where the vendor had not obtained the necessary consent of the directors, neither the retransfer of the shares nor the return of certificate was a condition precedent to the recovery of the purchase-money. *Wilkinson* v. *Lloyd*, 7 Q. B. 27; *Kempson* v. *Saunders*, 4 Car. & P. 366. The whole price was recovered though the value had fallen. *Wilkinson* v. *Lloyd*, 7 Q. B. 27.

A company which had power to do so disallowed a transfer; it was then wound up, and it became impossible to register the purchaser as shareholder; he refused to pay the purchase-money, but his broker paid, and under threat of legal proceedings he paid the broker. He failed to recover the amount from the vendor. *Remfry* v. *Butler*, E. B. & E. 887.

The purchaser must have been ready and willing to accept the shares in order to recover the purchase-money because of a failure of consideration. *Stray* v. *Russel*, 1 El. & E. 888; 28 L. J., Q. B. 279; 29 L. J., Q. B. 115. *Lamert* v. *Heath*, 15 M. & W. 486,

where it was left to the jury to decide whether there had been a delivery of the article contracted for.

A plea traversing the declaration that the plaintiff had not been *always* ready and willing to accept was bad as being too large. *Tempest* v. *Kelner*, 2 C. B. 300.

Actions for damages on non-delivery.

(2) In an action by the assignees of a purchaser, it was held (1) that the jury might properly infer from his bankruptcy and insolvency that they had not always been ready and willing to accept the transfer; (2) that the assignees having delayed to take decisive steps, the jury might infer they had abandoned their contract. *Lawrence* v. *Knowles*, 5 Bing. N. C. 396.

A declaration in an action for non-fulfilment of contract to sell shares was held bad for not averring that the plaintiff had tendered a conveyance. *Stephens* v. *De Medina*, 4 Q. B. 422.

In *Gunn* v. *Murray*, 6 Jur. 728, the plaintiff was nonsuited in an action for non-delivery of shares as he did not show that he had demanded delivery. But in *Franklin* v. *Lamond*, 4 C. B. 637, the defendants having claimed to be only agents were held to have dispensed with a tender of conveyance.

Measure of damages.

In an action for non-delivery of shares, the proper measure of damages is the difference between the contract price and the market price on the day of delivery. *Shaw* v. *Holland*, 15 M. & W. 136.

Shares had been lent and agreed to be given up. Damages for breach of contract were ascertained from the value at the time of bringing the action. *Owen* v. *Routh*, 14 C. B. 327.

In another case scrip was ordered to be given up and damages assessed for the difference of value at the time of demand and time of delivery up. *Williams* v. *Archer*, 5 C. B. 318.

Suits to set aside contract for fraud.

(3) Where directors had made misrepresentations through which a person had been induced to buy shares of one of them, the sale was set aside, and the selling director was compelled to take a re-transfer of the shares; the other directors were not necessary parties to the suit. *Stainbank* v. *Fearnley*, 9 Sim. 556.

Where shares were forfeited after bill filed at meetings of which the defendant was chairman, the forfeiture was no bar to setting aside a sale of them on account of fraud. *Maturin* v. *Tredinnick*, 4 N. R. 15.

Where the owner of shares represented that they belonged to some one else, and the purchaser acted under his advice, the sale was set aside. *Maturin* v. *Tredinnick*, 2 N. R. 514.

Where a person buys several shares and parts with some, unless the contract is severable, he cannot have the sale of the others set aside. If the shares are different, he may it seems. If the shares are all alike, as in the first case, he may have parted with the valuable ones and kept the valueless. *Maturin* v. *Tredinnick*, 2 N. R. 514.

Action for damages in case of fraud.

(4) In *Bedford* v. *Bagshaw*, 4 H. & N. 538; 29 L. J., Ex. 59, a purchaser recovered damages from the vendor who, as a director of the company, had joined in making false representations to the committee of the stock exchange to get a settling day for the company, on the faith of which the purchaser had taken the shares.

In *Clarke* v. *Dickson*, 28 L. J., C. P. 225; 6 C. B., N. S. 453, a

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purchaser recovered from a director who had joined in issuing a false prospectus which induced the plaintiff to buy shares of him.

Where a person had been induced to buy shares from a director by false reports of the directors as to the state of the company, the measure of damages given was the difference between the actual price paid and what would have been a fair price. *Davidson* v. *Tulloch*, 3 Macq. 783.

(5) In *Poole* v. *Middleton*, 29 Beav. 646, a decree was made against the vendor, though the directors refused to consent to the transfer.

Position of brokers.

47. Where brokers have themselves paid money in accordance with the rules of the stock exchange on account of the default of their principals, they can recover in an action of assumpsit from their principals (1). The broker does not undertake to carry out the instructions of his principal (2), but he must carry them out strictly (3).

Principal must indemnify him.

(1) Where a person had instructed his broker to buy shares in a bank, which stopped payment before the settling day, and he repudiated his contract, the broker paid the purchase-money and recovered it from his principal. *Taylor* v. *Stray*, 2 C. B., N. S. 175; 26 L. J., C. P. 287; *Mitchell* v. *Newark*, 15 M. & W. 308.

Where a person had ordered his broker by mistake to sell more shares than he had, the broker, having paid the difference of price to the vendor, recovered for money paid on account of his principal. *Sutton* v. *Tatham*, 10 Ad. & El. 27; 8 L. J., Q. B. 207.

But in *Bowlby* v. *Bell*, 3 C. B. 284; 16 L. J., C. P. 18, a broker failed to recover the difference of price he had paid on account of his principal as having failed to deliver his shares, the purchaser not having tendered an assignment. There was also some variation of the original contract between the broker and his principal. See also *Hanneric* v. *Goldner*, 11 M. & W. 810.

The older cases, *Child* v. *Morley*, 8 T. R. 610; *Lightfoot* v. *Creed*, 8 Taunt. 268, in which the broker failed on the form of his action, may be considered overruled.

In *Bayley* v. *Wilkins*, 7 C. B. 886, and *M'Ewen* v. *Woods*, 11 Q. B. 13, the vendee had to recoup his broker amount of calls he had paid: the calls had been made but were not due at the time of the contract, but became due before delivery.

In *Pollock* v. *Stables*, 12 Q. B. 765; 17 L. J., Q. B. 352, a purchaser who had failed to complete had to recoup his broker a sum he had paid as the difference of price on account of a fall in the market.

Where shares were sold after a voluntary winding-up had commenced, and the vendor refused to transfer because the liquidator had refused to sanction it, he was compelled to pay the broker

differences. *Biederman* v. *Stone*, L. R., 2 C. P. 504; 36 L. J., C. P. 198.

So where a winding-up order was made between the contract and time of transfer. *Chapman* v. *Shepherd*; *Whitehead* v. *Izod*, L. R., 2 C. P. 228; 36 L. J., C. P. 113.

An action was brought by a broker to recover sums he had paid in accordance with the custom of the stock exchange. A plea that the transaction was gambling was disallowed. Erle, C. J., said, "If a party loses a wager, and requests another to pay it for him, he is liable to the party so paying it for money paid at his request. I also think that if, according to the custom of brokers in a particular trade, a broker had authority to pay the amount due from his principal under the contract, that would be a continuing request by the principal to the broker to pay the money on his account, so as to render the principal liable to reimburse him. If the principal were to direct the broker not to pay, then a question might arise as to what was the position of the principal with regard to the broker." *Rosewarm* v. *Billing*, 15 C. B., N. S. 316; 33 L. J., C. P. 55; following *Jessop* v. *Latwych*, 10 Exch. 614.

(2) It was held that a count in an action by a principal against his broker, alleging a promise to buy shares for him, to support damages, was not sustained. *Fletcher* v. *Marshall*, 15 M. & W. 755.

(3) A broker who has authority to purchase shares for one settling day cannot do so for the next. *Maxted* v. *Paine*, L. R., 4 Ex. 81; 38 L. J., Ex. 41; *Fletcher* v. *Marshall*, 15 M. & W. 755.

A broker has authority only to sell for ready money. *Wiltshire* v. *Sims*, 1 Camp. 258.

A person ordered his broker to purchase shares in a company. The shares had not been issued, but certain letters of allotment were commonly bought and sold in the market. The broker bought some. It was left to the jury to decide whether he had carried out his instructions. *Mitchell* v. *Newark*, 15 M. & W. 308.

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48. The purchaser as between himself and his vendor is entitled to all benefits and liable for all losses or expenses in respect of the shares from the time of the contract (1). Contract determines equitable ownership.

(1) The expense of completion falls on the purchaser. *Stephens* v. *De Medina*, 1 Q. B. 422.

In an action by a broker for amount of calls, made before the contract, payable between that time and the time of delivery, he had paid on account of the purchaser his principal, Wilde, C. J., said, "The defendant bought the shares subject to all responsibility in respect of them beyond the 2*l.* a share which had been paid when he purchased them. This call is one of the consequences for which he agreed to make himself responsible, and the circumstance of want of knowledge that at the time he purchased a call had been made will

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not exclude his liability." *Bayley* v. *Wilkins*, 7 C. B. 886; 18 L. J., C. P. 273.

The defendant had sold scrip certificates of an unformed railway company, which ultimately got into the hands of the plaintiff; through the neglect of the plaintiff in not claiming the shares, the company when formed registered them in the name of the defendant and gave him certificates. He sold the shares to get rid of the liability. The plaintiff afterwards maintained a suit to make him account for the purchase-money. *Beckitt* v. *Bilbrough*, 8 Hare, 188.

But it seems the risk of loss from neglect remains with the vendor till he has ceased from being a member. *Hawkins* v. *Maltby* (2), L. R., 6 Eq. 505; 8 L. J., Ch. 313.

Illegal contracts.

49. A contract in the form of a sale of shares, where it is only intended that the difference of the market prices at the time of the contract and the settling day is to be paid, are void as wagering contracts (1). It is not, however, necessary, in order that such a contract may hold, that the vendor should be possessed of the shares at the time of the contract; it is sufficient if either party intends that some one shall carry out his part of the contract (2). Contracts for the sale of shares in illegal companies are void (3).

Gambling contracts (8 & 9 Vict. c. 109, s. 18).

(1) By 8 & 9 Vict. c. 109, s. 18, it is enacted, "That all contracts or agreements, whether by parol or in writing, by way of gaming or wagering, shall be null and void, and that no suit shall be brought or maintained in any court of law or equity for recovering any sum of money or valuable thing alleged to be won on any wager."

(2) Where an action was brought to recover the difference of price on two alleged sales of the same shares in a company, this statute having been pleaded, C. J. Jervis left it to the jury to say what was the plaintiff's intention and what was the defendant's intention at the time of making the contract, whether either party really meant to purchase or to sell the shares in question; telling them, that if they did not, the contract was, in his opinion, a gambling transaction and void. On motion for a new trial, it was held that this direction was right. *Grisewood* v. *Blane*, 21 L. J., C. P. 46; 11 C. B. 538; approved in *Barry* v. *Croskey*, 2 J. & H. 29.

Where the broker bought shares and sold the same number for his principal between themselves, never intending that the principal should actually take shares, but that they should be sold before the next settling day, it was held that this was not gambling, and the broker recovered the excess of price of the bought shares from his principal. *Ashton* v. *Dakin*, 7 W. R. 384.

In *Knight* v. *Cambers*, 24 L. J., C. P. 121, also, a plea that the transaction as between the principal and broker was gambling was held bad.

As instances of contracts sued upon where the purchaser had not the shares at the time of making the contract, see *Maxted* v. *Paine*, L. R., 4 Ex. 81 ; 38 L. J., Ex. 41 ; *Hibblewhite* v. *M'Moraine*, 5 M. & W. 462 ; *Mortimer* v. *M'Cullan*, 6 M. & W. 58 ; *Rudge* v. *Bowman*, L. R., 3 Q. B. 689 ; 37 L. J., Q. B. 193.

From the report of the case of *Rees* v. *Fernie*, 4 N. R. 539, it would seem that the courts of equity construe this statute more strictly than the courts of common law. In that case a person sold many more shares than he had, intending to buy others to be delivered to the purchasers, but was unable to deliver them through the fraud of the purchasers in rigging the market. He sought to have one of the contracts set aside. The court refused on interlocutory application to grant an injunction to restrain his being sued, though the fraud was not denied on the ground on which the decision was chiefly rested, that the transaction was in the nature of gambling. Perhaps, however, the true reason of this decision may have been that the judge thought the plaintiff *in pari delicto*.

The sale of shares in illegal companies.

(3) Where a company was illegal under 6 Geo. 1, c. 18, it was held that an action would not lie against a broker for the return of 25*l.* over charge. *Buck* v. *Buck*, 1 Camp. 547.

The plaintiff in an action for commission and the price of shares bought for the defendant was nonsuited, as the company was illegal under 1 Geo. 1, c. 18. *Josephs* v. *Pembrer*, 3 B. & C. 639.

The RULES of the LONDON STOCK EXCHANGE relating to the subject of this Chapter, are:—

Fulfilment of Bargains—Legal Proceedings.

49. The Stock Exchange does not recognize in its dealings any other parties than its own members; every bargain, therefore, whether for account of the member effecting it, or for account of a principal, must be fulfilled according to the regulations and usages of the house; and should a principal, without the consent of the committee, attempt to enforce by law a claim against a member of the Stock Exchange, the committee will decide as to the liability of the broker or agent of such principal for any cost or damages incurred in consequence of legal proceedings.

50. No member shall attempt to enforce by law a claim arising out of Stock Exchange transactions against a member or defaulter, or against the principal of a member or defaulter, without the consent of such member, of the trustees of the defaulter, or of the committee.

Rules applicable to Securities of Companies deliverable by Deed of Transfer.

80. Bargains in shares or stock, when no time is specified, and bargains made before twelve o'clock on name days, shall be considered to be made for the existing account.

81. The committee will not take cognizance of any bargain in stocks or shares effected for a period beyond the end of the ensuing two accounts.

82. An offer to buy or sell an amount of shares or stock at a price named is binding as to any part thereof that may be a marketable quantity; and an offer to buy or sell shares or stock, when no amount is named, is binding to the amount of ten shares, if in value under 500*l.*, or a number not exceeding in value that sum, or to the amount of 1,000*l.* stock.

83. The seller of registered shares or stock is responsible for the genuineness and regularity of all documents delivered, and for such dividends as may be received, until reasonable time has been allowed to the buyer to execute and duly lodge such documents for verification and registration. When an official certificate of registration of such stock or shares shall have been issued, the committee will not (unless bad faith is alleged against the seller) take cognizance of any subsequent dispute as to title until the legal issue has been decided between the buyer and the company, the reasonable expenses of which legal proceedings shall be borne by the seller.

84. The committee will not (except under special circumstances) interfere in any question arising from the delivery of shares, stock, bonds, or debentures by transfer in blank.

85. The buyer of stock, shares, bonds, or debentures shall pass a ticket for the same at a marketable price, containing the names and address of the buyer in full, before twelve o'clock on the name-day, either in the Stock Exchange or at the office of the seller; and in the event of his not doing so, should the stock, shares, bonds, or debentures be sold out, the loss (if any) shall fall upon him; it is therefore required, if the ticket should not be passed before twelve o'clock, that the person taking it should certify the same on the back thereof. The time for selling out shall be from half-past two to three o'clock. If the ticket be regularly passed before twelve o'clock, the person holding it at two o'clock shall be responsible for the loss occasioned by selling out on that day; but should the stock or shares not be sold out until the following day, then the person who held the ticket at three o'clock on the preceding day shall be liable. When the name-day is fixed for a Saturday, the time of selling out shall be from half-past twelve to one o'clock, and the person holding the ticket at half-past twelve o'clock shall be liable. Every person passing a ticket is required to write on the back of the ticket the name of the member to whom it is passed. A member dividing a ticket shall retain the original ticket, that access may be had to it should any portion of the shares have been sold out; and the member who has passed on the original ticket shall be required to trace it, in the event of any portion of the stock or shares having been sold out. Tickets may be left at the office of the seller up to one o'clock on name-days. Every person who receives a ticket "after two o'clock," or "after three o'clock," on the name-day, shall notify the same on the back of the ticket, by drawing a line or otherwise, in order to facilitate the tracing when shares are sold out; and any person neglecting to do so will be held responsible for any loss that may be incurred.

86. When shares of railway or other companies have been converted into consolidated stock, and are so quoted in the authorized list, buyers are required to pass tickets for stock, and not for shares.

87. A member not refusing an antedated ticket, when tendered as such, takes it with all its liabilities; but if it be passed as an ordinary ticket, the liabilities remain with the member putting such ticket again into circulation; and any person holding an undated ticket shall not be liable for any loss arising from the shares or stock having been bought in, if such ticket had not been ten days in his possession.

88. A member who makes an alteration in a transfer ticket for stock or shares, or improperly detains the same, shall make good any loss that may occur thereby.

89. The seller shall cause the shares or stock to be transferred at the price marked upon the ticket given him by the buyer; but the seller shall not be compelled to take a ticket at a price not quoted in the authorized list during the account, unless the bargain represented by such ticket shall have been made within the two preceding accounts.

90. The seller may, previous to delivery, pay any call made on registered shares, although not due, and claim the same of the buyer.

91. The buyer of transferable shares or stock shall pay the *ad valorem* duty, and all expenses attending the conveyance of the same; and shall state on the ticket the amounts in which he may desire to have the shares or stock transferred (provided no such amounts require a higher stamp than 9*l.* 15*s.*).

92. The buyer shall, in the event of his ticket being divided, pay for any portion which may be presented, provided the number be not less than ten shares, or the value less than 200*l.*

93. The buyer of stock or shares may refuse to pay for a transfer unaccompanied by coupons or certificates, unless it be certified thereon officially that the coupons or certificates are at the office of the company. But if the transfer presented be perfect in all other respects, the stock or shares must not be bought in until reasonable time has been allowed to the seller to obtain the verification required. If the seller have a larger coupon than the amount of stock conveyed, or only one coupon, representing stock conveyed by two or more transfers, the coupon may be deposited with the secretary of the share and loan department of the Stock Exchange, who shall forward it to the office of the company, and certify to that effect on the transfers, which shall then be a valid delivery. No person is to look to the managers or committee of the Stock Exchange as being liable for the due or accurate performance of those duties, the managers and committee holding themselves, and being held, entirely irresponsible in respect of the execution, or of any mis-execution, or non-execution, of the duties in question.

94. A member who has to deliver shares or stock, and who shall allow two clear days to elapse without availing himself of his right to sell out the same, releases the buyer from all loss caused by the failure of any person, through whose default the ticket was not passed; and if the stock or shares be not delivered within fifteen clear days, the issuer of the ticket should alone remain responsible.

95. When stock or shares are sold out, if a ticket be not given within half an hour after the time of sale, the transfer may be made into the name of the buyer, and if a name is guaranteed, the rule shall apply as if the stock or shares had been actually sold out.

96. Shares or stock, if not delivered within ten days, may be bought in against the seller, at or after twelve o'clock on the eleventh day after the date of the ticket, and all loss incurred thereby shall be paid by him. But in case a member shall, without the consent of the buyer, retain the ticket more than two days from the date thereof, the member so retaining shall bear the loss. The broker employed to buy in the shares is required to give one hour's public notice before proceeding to make such purchase, and if the purchase be not made or attempted within half an hour after the expiration of the time fixed, the notice shall be cancelled. Shares or stock thus bought in, and not delivered by one o'clock on the following day, may be repurchased for immediate delivery without further notice, and the loss, if any, shall be paid by the member causing such repurchase.

97. A member, who shall allow thirteen clear days from the date of the ticket to elapse, without buying in, or attempting to buy in, registered

shares or stock, shall release the seller from all loss caused by the failure of any member, through whose default the shares or stock were not delivered, unless such right has been waived at the request, or with the consent, of the seller. The right to buy in shares or stock is limited to the issue of the original ticket, whether his name or that of any other member is placed on the ticket to pay; but in order to identify the original ticket, the name into which the stock or shares are to be transferred must be stated on the order given to the broker employed to buy in, to whom holders of over-due tickets may apply.

98. The buyer is entitled to new stock or shares issued in right of old, provided that, within reasonable time, he specially claim the same, in writing, from the seller. Claims should be entered as bargains, and as such be checked in the usual manner. When practicable, claims are required to be settled by letters of renunciation, but if not practicable, and there be sufficient time for registration, the seller may, after due notice, require the buyer to complete the bargain in old stock or shares. If the new stock or shares cannot be obtained by letters of renunciation, or by the transfer of the old, the committee will fix a price at which the same shall be temporarily settled, and which amount may be deducted by the buyer from the purchase-money of the old stock or shares, until the special settlement. The committee will not entertain any dispute relating to unchecked claims, unless brought before them within ten days after the special settling day.

99. On the day before the name-day, and on the name-day of every settling day in securities deliverable by transfer, the clerk of the house shall, at twelve o'clock, fix the making-up prices for such securities at the actual market prices, and no making up shall be binding unless at such fixed prices. On name-days the clerk of the house shall (with the concurrence, if necessary, of a member of the committee) fix the prices of shares at three o'clock (or on Saturdays at one o'clock), at which prices unsettled accounts shall be temporarily made up, and the differences paid in the usual way.

100. No person shall be required to pay for registered shares or stock presented after half-past two o'clock; or after one o'clock on Saturdays.

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101. A seller, having transferred or delivered stock or other securities, has a right to demand payment from the member who passed him the ticket; and in case the seller apply to the member whose name is on the ticket, and is either refused payment, or receives a cheque which is dishonoured, the member from whom he received the ticket shall make immediate payment.

102. A seller may require payment of the difference between the price marked on the ticket and the making-up price of the day on which the ticket is tendered; but if such making-up price be above the price of sale, he shall only be entitled to claim the difference up to the price of sale.

THE COMPANIES ACT, 1862.

25 & 26 Vict. c. 89.

An Act for the Incorporation, Regulation and Winding-up of Trading Companies and other Associations.

[7th August, 1862.]

Whereas it is expedient that the laws relating to the incorporation, regulation and winding-up of trading companies and other associations should be consolidated and amended: be it therefore enacted, &c. as follows:

Preliminary.

Short title.

1. This act may be cited for all purposes as "The Companies Act, 1862."

Commencement of act.

2. This act, with the exception of such temporary enactment as is hereinafter declared to come into operation immediately (1), shall not come into operation until the second day of November, one thousand eight hundred and sixty-two, and the time at which it so comes into operation is hereinafter referred to as the commencement of this act.

Definition of insurance company.

3. For the purposes of this act a company that carries on the business of insurance in common with any other business or businesses shall be deemed to be an insurance company (2).

Prohibition of partnerships exceeding certain number.

4. No company, association or partnership consisting of more than ten persons shall be formed, after the commencement of this act, for the purpose of carrying on the business of banking, unless it is registered as a company under this act (3), or is

(1) See *post*, sects. 209, 210.

(2) This section is merely declaratory. *London and Provincial Provident Societies* v. *Ashton*, 12 C. B., N. S. 709; 1 N. R. 128; 11 W. R. 152, overruling *London Monetary Advance and Assurance Co.* v. *Smith*, 3 H. & N. 543; 27 L. J., Ex. 497.

Every insurance company completely registered under the 7 & 8 Vict. c. 110, was required, by the 209th sect. of this act, to register on or before the 2nd November, 1862.

The business of banking.

(3) A savings bank where the depositors cannot withdraw their money at will is not a banking company. *District Savings Bank*, *ex p. Coe*, 31 L. J., Ch. 8.

25 & 26 Vict. c. 89, s. 4.

formed in pursuance of some other act of parliament, or of letters patent; and no company, association or partnership consisting of more than twenty persons shall be formed, after the commencement of this act, for the purpose of carrying on any other business that has for its object the acquisition of gain (1) by the company, association or partnership, or by the individual members thereof, unless it is registered as a company under this act, or is formed in pursuance of some other act of parliament, or of letters-patent or is a company engaged in

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Acquisition of gain.

(1) Farming and grazing are within this section. *Harris* v. *Amery*, L. R., C. P. 148.

A company, the object of which was the acquisition of a house by each member, was not for the purpose of profit within the Companies Act, 1844. *Moore* v. *Rawlings*, 28 L. J., C. P. 247; 9 Jur., N. S. 491. Nor a mutual loan society. *Bear* v. *Bromley*, 18 Q. B. 271; 21 L. J., Q. B. 354.

Effect of illegality from non-registration.

V. C. Wood thought a suit would lie against the directors of a company, illegal for want of registration, by one of the members on behalf of the others. In a suit of that nature, no demurrer having been put in, a receiver was appointed. *Sheppard* v. *Oxenford*, 1 K. & J. 491.

Where a company had been started as a French company for the purpose of obtaining limited liability, a suit at the instance of a person who had innocently taken shares in it was instituted for an account, and a decree made; the directors were not allowed to set up the defence of non-registration. *Butt* v. *Monteant*, 1 K. & J. 98.

The executor of a shareholder who had mortgaged property to a building society, certified as a friendly society, sought to set aside the mortgage on the ground that it was not really a friendly society and ought to have been registered. "The plaintiff was bound to frame her suit as to enable the court, if it interfered on that ground, to wind up the association in a manner consistent with the rights and interests of all the members." *Burbidge* v. *Cotton*, 5 De G. & Sm. 17; 21 L. J., Ch. 201.

The Stannaries.

The stannary courts in Cornwall and Devonshire were established by custom. The courts are now regulated by statute 6 & 7 Will. 4, c. 106, amended by 2 & 3 Vict. c. 50; 11 & 12 Vict. c. 83, s. 7; 18 & 19 Vict. c. 32, and section 68 of this act, and that part of it which relates to the winding-up of companies, s. 74—173, and the Stannaries Act, 1869 (32 & 33 Vict. c. 19).

The 57th, 59th, 64th and 67th sections of the 7 & 8 Vict. c. 96, for amending the law as to insolvency, bankruptcy and execution, apply to these courts.

See Proceedings in the Stannary Courts of Cornwall and Devon, published by authority, 12mo. 1856; Bainbridge on Mines, 694, 3rd ed.; Wordsworth on Joint Stock Companies, 361, 10th ed.; Lindley on Partnership, 2nd ed. 148. As to cost-book mining companies, see Collier on Mines, 12mo. 1855; The Readwin Prize Essay on the Cost-book, by Tapping, 2nd ed. 1854.

working mines within and subject to the jurisdiction of the stannaries.

5. This act is divided into nine parts, relating to the following subject matters. Division of act.

The First Part—to the Constitution and Incorporation of Companies and Associations under this Act:

The Second Part - to the Distribution of the Capital and Liability of Members of Companies and Associations under this Act:

The Third Part—to the Management and Administration of Companies and Associations under this Act:

The Fourth Part—to the Winding up of Companies and Associations under this Act:

The Fifth Part—to the Registration Office:

The Sixth Part—to Application of this Act to Companies registered under the Joint Stock Companies Acts:

The Seventh Part—to Companies authorized to register under this Act:

The Eighth Part—to Application of this Act to unregistered Companies:

The Ninth Part—To Repeal of Acts, and temporary Provisions.

PART I.

CONSTITUTION AND INCORPORATION OF COMPANIES AND ASSOCIATIONS UNDER THIS ACT.

Memorandum of Association.

6. Any seven or more persons (2) associated for any lawful purpose (3) may, by subscribing their names to a memorandum Mode of forming company (1).

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(1) An agreement to form a joint stock company cannot be specifically enforced. *Stocker* v. *Wedderburn*, 26 L. J., Ch. 713; 3 K. & J. 393. *Semble*, the agreement to execute a deed binding the parties to form a company will be specifically enforced. *Ib.*

Where a person has paid money to be applied towards the establishment of a company he cannot withdraw it. *Baird* v. *Ship*, 2 Macq. 61.

(2) As a registered company may hold shares if its articles allow it, it is thought that, if not transgressing its objects, such a company may join in forming another company. *Barned's Banking Co., e.p. Contract Corp.* (2), L. R., 3 Ch. 105; 37 L. J., Ch. 81.

(3) Associations for objects offending against morality or public policy are illegal. What objects are illegal.

An agreement to share profits derived from the exhibition of a

25 & 26 Vict. c. 89, s. 6.

of association, and otherwise complying with the requisitions of this act in respect of registration, form an incorporated company, with or without limited liability.

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monstrous birth was held illegal. *Herring* v. *Walround*, 2 Ch. Ca. 110.

A society based upon irrational principles, and seeking to realize a visionary and unattainable object, was held not to be founded for the propagation of irreligious and immoral doctrines, so as to prevent a creditor recovering his debt. *Pare* v. *Clegg*, 29 Beav. 589.

An agreement between a citizen of the United States of America and an English subject for the exportation of goods from England to America on their joint account in time of war, "provided a peace should not be likely to take place at the time of shipping the goods," was illegal. *Evans* v. *Richardson*, 3 Mer. 469.

A contract of partnership in blockade running is not contrary to the municipal law of this country. *Re Grazebrook, e.p. Chavasse*, 6 N. R. 6.

As to how far the support of strikes is an illegal purpose, see *Farrer* v. *Close*, L. R., 4 Q. B. 602; 38 L. J., Q. B. 263, M.C. 132; *Hornby* v. *Close*, L. R., 2 Q. B. 153; 36 L. J., Q. B. 179, and 32 & 33 Vict. c. 61.

Evidence of illegality.

As far as the rights of strangers are concerned, the articles of association will be conclusive evidence of the objects of a company.

The rules of a friendly society, certified by the barrister appointed to certify the rules of savings banks, were treated as conclusive as to the character of the society. *Pare* v. *Clegg*, 29 Beav. 589.

Compare cases *ante*, par. 13 (3), p. 48.

But as between themselves a different rule will apply. *Armstrong* v. *Armstrong*, 3 My. & K. 45; *Sharp* v. *Taylor*, 2 Ph. 801; *Stewart* v. *Gibson*, 7 Cl. & F. 707.

The registered rules may be legal, but there may be secret purposes which render a friendly society illegal. *Per* Hannen and Hayes, JJ., *Farrer* v. *Close*, L. R., 4 Q. B. 602; 38 L. J., Q. B. 263, M. C. 132.

Rights under illegal associations,

at law,

An action for contribution on account would not lie for dealings part of an adventure for trafficing in slaves. *Stewart* v. *Gibson*, 7 Cl. & F. 707.

A bond for the payment of money upon the formation by the obligee of an illegal company was held to be invalid. *Duvergier* v. *Fellows*, 5 Bing. 248; 10 B. & C. 826; 1 Cl. & F. 39.

In *Aubert* v. *Maze*, 2 Bos. & P. 371, it was held that money paid on account of losses incurred on partnership insurances, which were then illegal, could not be recovered by action; and that if that, with other causes of dispute, was referred to an arbitrator, the award made thereon would be set aside so far as it related to the illegal matters. *Mitchell* v. *Cocburn*, 2 H. B. 380, was similar.

Premiums received by one partner could not be recovered by the others. *Booth* v. *Hodgson*, 6 T. R. 405.

An express covenant to pay the shares of profits or insurances was held invalid by reason of it being tainted with illegality. *Tees* v. *Smith*, 7 T. R. 338.

in equity.

In *Sheppard* v. *Renford*, 1 K. & J. 491, a shareholder instituted a suit against the surviving trustee of an unincorporated company, and though it was doubted whether the objects of the company were legal, a receiver was appointed.

Mode of limiting liability of members (1).

7. The liability of the members of a company formed under this act may, according to the memorandum of association, be limited either to the amount, if any, unpaid on the shares respectively held by them, or to such amount as the members may respectively undertake by the memorandum of association to contribute to the assets of the company in the event of its being wound up.

Memorandum of association of a company limited by shares.

8. Where a company is formed on the principle of having the liability of its members limited to the amount unpaid on their shares, hereinafter referred to as a company limited by shares, the memorandum of association shall contain the following things, (that is to say,)

(1.) The name of the proposed company, with the addition of the word "limited" as the last word in such name (2):

(2.) The part of the United Kingdom, whether England, Scotland or Ireland, in which the registered office of the company is proposed to be situate:

(3.) The objects for which the proposed company is to be established:

In *Ewing* v. *Osbaldiston*, 2 M. & Cr. 53, a partnership bill for an account was dismissed, the agreement on which it was founded being for an illegal purpose under 10 Geo. 2, c. 28.

In *Evans* v. *Richardson*, 3 Mer. 469, a bill for an account of the concerns of an illegal partnership was dismissed, although the defendant did not rely on the illegality as a defence.

The court has also refused to relieve in such suits in *Holman* v. *Johnson*, 1 Cow. 243; *Thomson* v. *Thomson*, 7 Ves. 470; *Cousins* v. *Smith*, 13 Ves. 544. The cases *Dover* v. *Opey*, 2 Eq. Ca. Ab. 7, and *Watts* v. *Brooks*, 3 Ves. 611, must be considered overruled.

A bill is said to have been instituted by one highwayman against another and dismissed with costs. 2 Pothier on Obligations, by Evans, p. 3, note.

As to the effect of illegality on the right to recover deposits, see *ante*, p. 37.

As to contracts for the sale of shares in illegal companies, see *ante*, p. 173.

For further details on illegal partnerships, see Lindley on Partnership, ch. vi., 2nd ed., p. 178.

(1) Companies may have the liability of their directors unlimited, and that of their other members limited. C. A. 1867, s. 4.

(2) Associations not formed for purposes of gain need not be styled "limited." C. A. 1867, s. 23.

When the capital of a company is reduced, the words "and reduced" are to form part of its name. C. A. 1867, s. 10.

25 & 26 Vict. c. 89, s. 8.

(4.) A declaration that the liability of the members is limited:

(5.) The amount of capital with which the company proposes to be registered divided into shares of a certain fixed amount:

Subject to the following regulations:

(1.) That no subscriber shall take less than one share:

(2.) That each subscriber of the memorandum of association shall write opposite to his name the number of shares he takes.

Memorandum of association of a company limited by guarantee.

9. Where a company is formed on the principle of having the liability of its members limited to such amount as the members respectively undertake to contribute to the assets of the company in the event of the same being wound up, hereinafter referred to as a company limited by guarantee, the memorandum of association shall contain the following things, (that is to say,)

(1.) The name of the proposed company, with the addition of the word "limited" as the last word in such name (1):

(2.) The part of the United Kingdom, whether England, Scotland or Ireland, in which the registered office of the company is proposed to be situate:

(3.) The objects for which the proposed company is to be established:

(4.) A declaration that each member undertakes to contribute to the assets of the company, in the event of the same being wound up, during the time that he is a member, or within one year afterwards (2), for payment of the debts and liabilities of the company contracted before the time at which he ceases to be a member, and of the costs, charges and expenses of winding-up the company, and for the adjustment of the rights of the contributories amongst themselves, such amount as may be required, not exceeding a specified amount (3).

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(1) See *ante*, p. 181, note (2).
(2) See sect. 38, pl. 1, *post*, p. 196.
(3) See sect. 90, *post*.

Memorandum of association of an unlimited company.

10. Where a company is formed on the principle of having no limit placed on the liability of its members, hereinafter referred to as an unlimited company, the memorandum of association (1) shall contain the following things, (that is to say,)

(1.) The name of the proposed company:

(2.) The part of the United Kingdom, whether England, Scotland or Ireland, in which the registered office of the company is proposed to be situate:

(3.) The objects for which the proposed company is to be established.

Stamp, signature and effect of memorandum of association.

11. The memorandum of association shall bear the same stamp as if it were a deed, and shall be signed by each subscriber in the presence of and be attested by one witness at the least, and that attestation shall be a sufficient attestation in Scotland as well as in England and Ireland. It shall, when registered, bind the company and the members thereof to the same extent as if each member had subscribed his name and affixed his seal thereto, and there were in the memorandum contained, on the part of himself, his heirs, executors and administrators, a covenant to observe all the conditions of such memorandum, subject to the provisions of this act.

Power of certain companies to alter memorandum of association.

12. Any company limited by shares may so far modify the conditions contained in its memorandum of association, if authorized to do so by its regulations as originally framed, or as altered by special resolution in manner hereinafter mentioned (2), as to increase its capital (3) by the issue of new shares of such amount as it thinks expedient, or to consolidate and divide its capital into shares of larger amount than its existing shares, or to convert its paid-up shares into stock, but, save as aforesaid, and save as is hereinafter provided in the case of a change of name, no alteration shall be made by any company in the conditions contained in its memorandum of association (4).

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(1) See second schedule to this act, form (D), *post*.

(2) As to passing special resolutions, see *post*, sect. 51, p. 202.

(3) As to increase of capital, see *post*, sect. 34.

(4) Section 12 applies to companies registered but not formed under the Act of 1862. *Droitwich Patent Salt Co.* v. *Curzon*, L. R., 3 Ex. 35; 37 L. J., Ex. 2.

By the Companies Act, 1867, the capital of a company may be reduced (s. 9 *et seq.*), and the shares subdivided (s. 21).

25 & 26 Vict. c. 89, s. 13.

Power of companies to change name.

13. Any company under this act, with the sanction of a special resolution of the company passed in manner hereinafter mentioned, and with the approval of the board of trade testified in writing under the hand of one of its secretaries or assistant secretaries, may change its name, and upon such change being made the registrar shall enter the new name on the register in the place of the former name, and shall issue a certificate of incorporation altered to meet the circumstances of the case; but no such alteration of name shall affect any rights or obligations of the company, or render defective any legal proceedings instituted or to be instituted by or against the company, and any legal proceedings may be continued or commenced against the company by its new name that might have been continued or commenced against the company by its former name.

Articles of Association (1).

Regulations to be prescribed by articles of association.

14. The memorandum of association may, in the case of a company limited by shares, and shall, in the case of a company limited by guarantee or unlimited, be accompanied, when registered, by articles of association signed by the subscribers to the memorandum of association, and prescribing such regulations for the company as the subscribers to the memorandum of association deem expedient: the articles shall be expressed in separate paragraphs, numbered arithmetically; they may adopt all or any of the provisions contained in the table marked (A) in the first schedule hereto; they shall, in the case of a company, whether limited by guarantee or unlimited, that has a capital divided into shares, state the amount of capital with which the company proposes to be registered; and in the case of a company, whether limited by guarantee or unlimited, that has not a capital divided into shares, state the number of members with which the company proposes to be registered, for the purpose of enabling the registrar to determine the fees payable on regis-

(1) The articles of association are controlled by the memorandum of association, and if at variance with it are to that extent void.

The memorandum of association of a company provided that the capital was subject to be increased or modified, the articles provided for a reduction: held, that there was a variance, and a reduction was illegal. *Financial Corp., Feiling's Case*, L. R., 2 Ch. 714; 36 L. J., Ch. 87; *New Zealand Banking Corp., Sewell's Case*, L. R., 3 Ch. 131. See also s. 50, *post*, and *ante*, p. 69.

Strangers dealing with a company are affected with notice of the contents of its articles of association. See *ante*, par. **13** (3), p. 48.

tration. In a company limited by guarantee or unlimited, and having a capital divided into shares, each subscriber shall take one share at the least, and shall write opposite to his name in the memorandum of association the number of shares he takes.

Application of table (A.) (1).

15. In the case of a company limited by shares, if the memorandum of association is not accompanied by articles of association, or in so far as the articles do not exclude or modify the regulations contained in the table marked (A) in the first schedule hereto, the last-mentioned regulations shall, so far as the same are applicable, be deemed to be the regulations of the company in the same manner and to the same extent as if they had been inserted in articles of association, and the articles had been duly registered.

Stamp, signature and effect of articles of association.

16. The articles of association shall be printed, they shall bear the same stamp as if they were contained in a deed, and shall be signed by each subscriber in the presence of, and be attested by, one witness at the least, and such attestation shall be a sufficient attestation in Scotland as well as in England and Ireland: when registered, they shall bind the company and the members thereof to the same extent as if each member had subscribed his name and affixed his seal thereto, and there were in such articles contained a covenant on the part of himself, his heirs, executors and administrators, to conform to all the regulations contained in such articles, subject to the provisions of this act; and all monies payable by any member to the company, in pursuance of the conditions and regulations of the company, or any of such conditions or regulations, shall be deemed to be a debt due from such member to the company, and in England and Ireland to be in the nature of a specialty debt.

General Provisions.

Registration of memorandum of association and articles of association, with fees as in table (B).

17. The memorandum of association and the articles of association, if any, shall be delivered to the registrar of joint stock companies hereinafter mentioned, who shall retain and register the same (2). There shall be paid to the registrar by a company

(1) The board of trade may alter table A., but only so far as future companies are concerned, *post*, s. 71.

(2) The 35th section, *post*, p. 194, provides a remedy for the improper entry or omission of the entry in the register. See also *ante*, par. 31 (3), p. 116.

25 & 26 Vict. c. 89, s. 17.

having a capital divided into shares, in respect of the several matters mentioned in the table marked (B) in the first schedule hereto, the several fees therein specified, or such smaller fees as the board of trade may from time to time direct; and by a company not having a capital divided into shares, in respect of the several matters mentioned in the table marked (C) in the first schedule hereto, the several fees therein specified, or such smaller fees as the board of trade may from time to time direct: all fees paid to the said registrar in pursuance of this act shall be paid into the receipt of her Majesty's exchequer, and be carried to the account of the consolidated fund of the United Kingdom of Great Britain and Ireland.

Effect of registration (1).

18. Upon the registration of the memorandum of association, and of the articles of association in cases where articles of association are required by this act or by the desire of the parties to be registered, the registrar shall certify under his hand that the company is incorporated, and in the case of a limited company that the company is limited: the subscribers of the memorandum of association, together with such other persons as may from time to time become members of the company, shall thereupon be a body corporate by the name contained in the memorandum of association, capable forthwith of exercising all the functions of an incorporated company, and having perpetual succession and a common seal, with power to hold lands, but with such liability on the part of the members to contribute to the assets of the company in the event of the same being wound up as is hereinafter mentioned; a certificate of the incorporation of any company given by the registrar shall be conclusive evidence that all the requisitions of this act in respect of registration have been complied with (2).

Certificate when void.

(1) If a company is not authorized to be registered, Turner, L. J., considered it quite clear that the certificate of registration could be of no avail. *Re Northumberland and Durham District Banking Co.*, 2 De G. & J. 371; 27 L. J., Ch. 354. It was decided that the certificate of the registrar of friendly societies was conclusive evidence of the society being legal as regards contracts. *Pare* v. *Clegg*, 7 Jur., N. S. 1136; 30 L. J., Ch. 742; 29 Beav. 589; see *ante*, p. 180.

Effect of registration and certificate.

(2) It was held that 19 & 20 Vict. c. 47 (C. A. 1856), s. 13, did not enable the registrar to extend the act to companies not within its scope, and the certificate had no effect to incorporate a company which was not entitled to be incorporated. *Re Northumberland and*

19. A copy of the memorandum of association, having annexed thereto the articles of association, if any, shall be forwarded to every member, at his request, on payment of the sum

Copies of memorandum and articles to be given to members.

Durham District Banking Co., 2 De G. & J. 357; 27 L. J., Ch. 354. "If this company was not authorized to be registered, I take it to be quite clear that the certificate of registration can be of no avail." *Per* Turner, L. J.

Sect. 192, relating to the registration of existing companies, is more comprehensive in its terms.

The memorandum of association when brought to the office of the registrar was objected to as going beyond the prospectus, whereupon the bearer of it *then and there*, without any communication with the persons who had signed it, made alterations to remove the objections of the registrar, who at once registered it in the altered form. It was held, that though the conduct of the registrar in knowingly registering a document thus altered was most censurable, the company was duly constituted, the certificate of registration being under s. 18 *conclusive* evidence that requisitions of the act had been complied with. *Barned's Banking Co., Peel's Case*, L. R., 2 Ch. 674; 36 L. J., Ch. 757.

Under 7 & 8 Vict. c. 110 (C. A. 1844), s. 7, the court refused to hold registration void (at any rate as regards shareholders) because all the requisites of that act had not been complied with. *Banwen Iron Co.* v. *Barnett*, 19 L. J., C. P. 17; 8 C. B. 406.

So also persons could not on that ground have their names removed from the list of contributories. *Independent Assurance Co., e.p. Bird*, 20 L. J., Ch. 30; 1 Sim., N. S. 47.

Other evidence of incorporation.

Incorporation or registration may be proved by other evidence as well as by the registrar's certificate. In *Mostyn* v. *Calcott Hall Mining Co.*, 1 Fost. & Fin. 534, registration was proved against the company in an action for breach of contract by the production of certificates of shares issued under its seal. In *Agriculturist Cattle Insurance Co.* v. *Fitzgerald*, 16 Q. B. 432, registration was proved in an action by the company without the production of the registrar's certificate. But stronger evidence is necessary to prove the incorporation of the company as against third parties; and so, when a prisoner convicted for embezzlement objected to the conviction that his employers were an incorporated company, and showed that they carried on business as and under the style of a company, with shares transferable by certificates and a minute book, it was held that this was no evidence of incorporation against the crown. *R.* v. *Frankland*, 9 Jur., N. S. 390.

"I think the certificate prevents all recurrence to prove matters essential to registration, amongst which is the subscription of a memorandum of association by seven persons, and that it is conclusive in this case that all previous requisites had been complied with." *Per* L. C. Chelmsford, *Oake* v. *Turquand*, L. R., 3 E. & I. 325; 36 L. J., Ch. 949.

As to friendly societies, see *Pare* v. *Clegg*, 29 Beav. 589; 30 L. J., Ch. 742.

25 & 26 Vict. c. 89, s. 19.

of one shilling or such less sum as may be prescribed by the company for each copy; and if any company makes default in forwarding a copy of the memorandum of association and articles of association, if any, to a member, in pursuance of this section, the company so making default shall for each offence incur a penalty not exceeding one pound (1).

Prohibition against identity of names in companies (2).

20. No company shall be registered under a name identical with that by which a subsisting company is already registered, or so nearly resembling the same as to be calculated to deceive,

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(1) The mode of recovering penalties is prescribed by sect. 65, *post.*

Act as to fraudulent trade marks extends to bodies corporate, &c.

(2) In the act to amend the law relating to the fraudulent marking of merchandize, 25 & 26 Vict. c. 88, the word "person" in that act includes any person, whether a subject of her Majesty or not, and any body corporate or body of the like nature, whether constituted according to the law of this country, or of any of her Majesty's colonies or dominions, according to the law of any foreign country, and also any company, association or society of persons, whether the members thereof be subjects of her Majesty or not, or some of such persons subjects of her Majesty, or some of them not, and whether such body corporate, body of the like nature, company, association or society be established to carry on business within her Majesty's dominions or elsewhere, or partly within her Majesty's dominions, and partly elsewhere.

Action for assuming an identical name.

In an action against a banking corporation the declaration stated that the plaintiff had established a bank, called "The Bank of London," at great expense, and caused the name to be published and affixed to the offices of the bank and prospectuses to be issued, and that the defendants afterwards fraudulently established another bank under the style of "The Bank of London," in imitation of the Bank of London of the plaintiff, by reason of which he was prevented from carrying on his business at his bank so fully as he otherwise would, and was deprived of gains and profits: it was held, that the declaration was bad for not showing that the plaintiff carried on the business of a banker. Jervis, C. J., said, all that appears is, that the plaintiff was the promoter of a certain bank, called "The Bank of London," which he proposed to establish in the city of London, and that he incurred expense in putting up the name on a brass plate and in publishing prospectuses, and that some one else had beaten him in the race and established a bank under the same name by virtue of letters-patent. It did not appear that the plaintiff had even carried on the business of banking, or that he had a single customer, or that he was in a position to be damnified by the acts of the defendants. *Lawson* v. *Bank of London*, 18 C. B. 84; 2 Jur., N. S. 18; 25 L. J., C. P. 188.

Suits to restrain user of names.

In *The London and Provincial Law Assurance Society* v. *Provincial Joint Stock Life Assurance Co.*, 17 L. J., Ch. 37, the court refused to restrain the defendants from using the first three words of their name

except in a case where such subsisting company is in the course of being dissolved and testifies its consent in such manner as the registrar requires; and if any company, through inadvertence or otherwise, is, without such consent as aforesaid, registered by a name identical with that by which a subsisting company is registered, or so nearly resembling the same as to be calculated to deceive, such first-mentioned company may, with the sanction of the registrar, change its name, and upon such change being made the registrar shall enter the new name on the register in the place of the former name, and shall issue a certificate of incorporation altered to meet the circumstances of the case; but no such alteration of name shall affect any rights or obligations of the company, or render defective any legal proceedings instituted or to be instituted by or against the company, and any legal proceedings may be continued or commenced against the company by its new name that might have been continued or commenced against the company by its former name.

Prohibition against certain companies holding land.

21. No company formed for the purpose of promoting art, science, religion, charity, or any other like object, not involving the acquisition of gain by the company or by the individual members thereof, shall, without the sanction of the board of trade, hold more than two acres of land; but the board of trade may, by licence (1) under the hand of one of their principal secretaries or assistant secretaries, empower any such company to hold lands in such quantity and subject to such conditions as they think fit.

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on the ground that no injury was likely to happen to the plaintiffs from such user.

In *The London Assurance* v. *The London and Westminster Assurance Corp.*, 32 L. J., Ch. 64, and in *The Colonial Life Assurance Co.* v. *Home and Colonial Assurance Co.*, 23 Beav. 548; 33 L. J., Ch. 741, injunctions were also refused. In the latter case, the reason given for refusing the injunction was that the plaintiff had no right to the exclusive user of a general term descriptive of the locality of its business.

(1) See form (F) in second schedule to this act.

25 & 26 Vict. c. 89.

Part II.

Distribution of Capital and Liability of Members of Companies and Associations under this Act.

Distribution of Capital.

Nature of interest in company (1).

22. The shares or other interest of any member in a company under this act shall be personal estate, capable of being transferred in manner provided by the regulations of the company (2), and shall not be of the nature of real estate, and each share shall, in the case of a company having a capital divided into shares, be distinguished by its appropriate number (3).

Definition of "member" (4).

23. The subscribers of the memorandum of association of any company under this act shall be deemed to have agreed to become members of the company whose memorandum they have subscribed, and upon the registration of the company shall be entered as members on the register of members hereinafter mentioned; and every other person who has agreed to become a member of a company under this act, and whose name is entered on the register of members, shall be deemed to be a member of the company.

Transfer by personal representative.

24. Any transfer of the share or other interest of a deceased member of a company under this act, made by his personal representative, shall, notwithstanding such personal representative may not himself be a member, be of the same validity as if he had been a member at the time of the execution of the instrument of transfer (2).

Register of members.

25. Every company under this act shall cause to be kept in one or more books a register of its members (5), and there shall be entered therein the following particulars:—

(1.) The names and addresses, and the occupations, if any, of the members of the company, with the addition, in

(1) See Chap. VI. p. 147.
(2) See table (A) to this act, pl. 8—16; for the mode of transferring shares in companies formed under the older Joint Stock Companies Acts, see sect. 178.
(3) See note (1), p. 191.
(4) See *ante*, par. 30, p. 112.
(5) See sect. 37, *post*, p. 195.

the case of a company having a capital divided into shares, of a statement of the shares held by each member, distinguishing each share by its number (1); and of the amount paid or agreed to be considered as paid on the shares of each member:

(2.) The date at which the name of any person was entered in the register as a member:

(3.) The date at which any person ceased to be a member:

And any company acting in contravention of this section shall incur a penalty (2) not exceeding five pounds for every day during which its default in complying with the provisions of this section continues, and every director or manager of the company who shall knowingly and wilfully authorize or permit such contravention shall incur the like penalty.

Annual list of members.

26. Every company under this act, and having a capital divided into shares, shall make, once at least in every year, a list of all persons who, on the fourteenth day succeeding the day on which the ordinary general meeting, or if there is more than one ordinary meeting in each year (3), the first of such ordinary general meetings is held, are members of the company; and such list shall state the names, addresses and occupations of all the members therein mentioned, and the number of shares held by each of them, and shall contain a summary specifying the following particulars:—

(1.) The amount of the capital of the company, and the number of shares into which it is divided;

Appropriate numbering.

(1) The existence of shares of the same numbers will not prevent a person being liable on shares which have been fraudulently forfeited. *London and County Insurance Co., Jones' Case*, 27 L. J., Ch. 666.

In *The Irish Peat Co.* v. *Phillips*, 30 L. J., Q. B. 114; 1 B. & S. 598, the deed of settlement, which was incorporated in the act of parliament which governed the company, contained a provision for numbering the shares. The court thought that the registered holder of fifty shares, which were not separately numbered, could not be sued for calls as he was not a shareholder. Doubt was however thrown upon this in error, where it was decided on other grounds. 30 L. J., Q. B. 363.

(2) The mode of recovering penalties is prescribed by sect. 65, *post*.

(3) A general meeting of every company under this act shall be held once at least in every year, *post*, sect. 49, p. 202.

25 & 26 Vict. c. 89, s. 26.

(2.) The number of shares taken from the commencement of the company up to the date of the summary;

(3.) The amount of calls made on each share;

(4.) The total amount of calls received;

(5.) The total amount of calls unpaid;

(6.) The total amount of shares forfeited;

(7.) The names, addresses and occupations of the persons who have ceased to be members since the last list was made, and the number of shares held by each of them.

The above list and summary shall be contained in a separate part of the register, and shall be completed within seven days after such fourteenth day as is mentioned in this section, and a copy shall forthwith be forwarded to the registrar of joint stock companies.

Penalty on company, &c. not keeping a proper register.

27. If any company under this act, and having a capital divided into shares, makes default in complying with the provisions of this act with respect to forwarding such list of members or summary as is hereinbefore mentioned to the registrar, such company shall incur a penalty (1) not exceeding five pounds for every day during which such default continues, and every director and manager of the company who shall knowingly and wilfully authorize or permit such default shall incur the like penalty.

Company to give notice of consolidation or of conversion of capital into stock.

28. Every company under this act, having a capital divided into shares, that has consolidated and divided its capital into shares of larger amount than its existing shares, or converted any portion of its capital into stock, shall give notice to the registrar of joint stock companies of such consolidation, division or conversion, specifying the shares so consolidated, divided or converted.

Effect of conversion of shares into stock.

29. Where any company under this act, and having a capital divided into shares, has converted any portion of its capital into stock, and given notice of such conversion to the registrar, all the provisions of this act which are applicable to shares only shall cease as to so much of the capital as is converted into stock; and the register of members hereby required to be kept

(1) The mode of recovering penalties is prescribed by sect. 65, *post.*

by the company, and the list of members to be forwarded to the registrar, shall show the amount of stock held by each member in the list instead of the amount of shares and the particulars relating to shares hereinbefore required (1).

Entry of trusts on register (2).

30. No notice of any trust, expressed, implied or constructive, shall be entered on the register, or be receivable by the registrar, in the case of companies under this act and registered in England or Ireland.

Certificate of shares or stock.

31. A certificate, under the common seal of the company, specifying any share or shares or stock held by any member of a company, shall be *primâ facie* evidence of the title of the member to the share or shares or stock therein specified.

Inspection of register.

32. The register of members, commencing from the date of the registration of the company, shall be kept at the registered office of the company as hereinafter mentioned; except when closed as hereinafter mentioned, it shall during business hours, but subject to such reasonable restrictions as the company in general meeting may impose, so that not less than two hours in each day be appointed for inspection, be open to the inspection of any member gratis, and to the inspection of any other person on the payment of one shilling, or such less sum as the company may prescribe, for each inspection; and every such member or other person may require a copy of such register, or any part thereof, or of such list or summary of members as is hereinbefore mentioned, on payment of sixpence for every hundred words required to be copied; if such inspection or copy is refused, the company shall incur for each refusal a penalty not exceeding two pounds, and a further penalty not exceeding two pounds for every day during which such refusal continues, and every director and manager of the company who shall knowingly authorize or permit such refusal shall incur the like penalty (3); and in addition to the above penalty, as respects companies registered in England and Ireland, any judge sitting in chambers, or the vice-warden of the stannaries,

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(1) *Ante*, sect. 26, p. 191.
(2) See *ante*, p. 113.
(3) The mode of recovering penalties is prescribed by the 65th section, *post*.

25 & 26 Vict. c. 89, s. 32.

in the case of companies subject to his jurisdiction, may by order compel an immediate inspection of the register.

Power to close register.

33. Any company under this act may, upon giving notice by advertisement in some newspaper circulating in the district in which the registered office of the company is situated, close the register of members for any time or times not exceeding in the whole thirty days in each year.

Notice of increase of capital and of members to be given to registrar.

34. Where a company has a capital divided into shares, whether such shares may or may not have been converted into stock, notice of any increase in such capital beyond the registered capital, and where a company has not a capital divided into shares, notice of any increase in the number of members beyond the registered number, shall be given to the registrar in the case of an increase of capital, within fifteen days from the date of the passing of the resolution by which such increase has been authorized, and in the case of an increase of members within fifteen days from the time at which such increase of members has been resolved on or has taken place, and the registrar shall forthwith record the amount of such increase of capital or members; if such notice is not given within the period aforesaid, the company in default shall incur a penalty not exceeding five pounds for every day during which such neglect to give notice continues, and every director and manager of the company who shall knowingly and wilfully authorize or permit such default shall incur the like penalty (1).

Remedy for improper entry or omission of entry in register (2).

35. If the name of any person is, without sufficient cause, entered in or omitted from the register of members of any company under this act, or if default is made or unnecessary delay takes place in entering on the register the fact of any person having ceased to be a member of the company, the person or member aggrieved, or any member of the company, or the company itself, may, as respects companies registered in England or Ireland, by motion (3) in any of her Majesty's superior courts of law or equity, or by application to a judge

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(1) The mode of recovering penalties is prescribed by the 65th section, *post*.

(2) See *ante*, par. **31** (3), (4), pp. 116—120.

(3) This does not exclude the jurisdiction of the superior courts of law and equity, as s. 81 does. *Penhale and Lomax Mining Co.*, L. R., 2 Ch. 398; 36 L. J., Ch. 515.

sitting in chambers, or to the vice-warden of the stannaries in the case of companies subject to his jurisdiction, and as respects companies registered in Scotland by summary petition to the court of session, or in such other manner as the said courts may direct, apply for an order of the court that the register may be rectified; and the court may either refuse such application, with or without costs, to be paid by the applicant, or it may, if satisfied of the justice of the case, make an order for the rectification of the register, and may direct the company to pay all the costs of such motion, application or petition, and any damages (1) the party aggrieved may have sustained; the court may in any proceeding under this section decide on any question relating to the title of any person who is a party to such proceeding to have his name entered in or omitted from the register, whether such question arises between two or more members or alleged members, or between any members or alleged members and the company, and generally the court may in any such proceeding decide any question that it may be necessary or expedient to decide for the rectification of the register; provided that the court, if a court of common law, may direct an issue to be tried, in which any question of law may be raised, and a writ of error or appeal, in the manner directed by "The Common Law Procedure Act, 1854," shall lie (2).

Notice to registrar of rectification of register.

36. Whenever any order has been made rectifying the register, in the case of a company hereby required to send a list of its members to the registrar, the court shall, by its order, direct that due notice of such rectification be given to the registrar.

Register to be evidence.

37. The register of members shall be *primâ facie* evidence of any matters by this act directed or authorized to be inserted therein (3).

Liability of Members.

Liability of present and

38. In the event of a company formed under this act being

(1) Where the company had been in default, preliminary costs (costs of procuring legal advice) were given by way of damages. *New Quebrada Co., ex p. Pontifex*, 36 L. J., Ch. 903.

(2) See 17 & 18 Vict. c. 125, ss. 32—45.

(3) See sect. 25, *ante*, p. 190.

25 & 26 Vict. c. 89, s. 38.

past members of company.

wound up, every present and past (1) member of such company shall be liable (2) to contribute to the assets of the company to an amount sufficient for payment of the debts and liabilities of the company, and the costs, charges and expenses of the winding-up, and for the payment of such sums as may be required for the adjustment of the rights of the contributories amongst themselves, with the qualifications following, (that is to say,)

(1.) No past member shall be liable to contribute to the assets of the company if he has ceased to be a member for a period of one year or upwards prior to the commencement of the winding-up (3):

(2.) No past member shall be liable to contribute in respect of any debt or liability of the company contracted after the time at which he ceased to be a member (4):

What past members are liable.

(1) A person whose shares had been forfeited within a year from the date of the winding-up order was made a contributory. *Blakeley Ordnance Co., Creyke's Case*, 17 W. R. 981.

Where there have been several changes of membership within the year with respect to the same shares, the past shareholders are liable in succession. *Barned's Banking Co., ex.p. Andrews*, 36 L. J., Ch. 802; L. R., 4 Eq. 58.

A past member, who had transferred shares which were afterwards forfeited, his transferee being unable to pay the contribution required, was placed on the list of contributories. *Accidental Marine Insurance Co., Bridge's and Neil's Cases*, L. R., 4 Ch. 266; 38 L. J., Ch. 201.

Where a previously existing company has been incorporated by registration, persons who have ceased to be members before the registration cannot be made contributories. *Harvey* v. *Clough*, 2 N. R. 204; *Lanyon* v. *Smith*, 32 L. J., Q. B. 212; 2 N. R. 118.

Extent of liability.

The liability of past members to contribute extends to debts incurred before they became members. *Barned's Banking Co., Helbert's Case*, 16 W. R. 1075.

(2) See sect. 7, *ante*, p. 181.

Cost-book mining companies.

(3) See sects. 84 and 130. Persons who have ceased to be shareholders in cost-book mining companies for two years before a winding-up order are not liable to be made contributories. 22 & 23 Vict. c. 19, s. 25.

(4) The object of this seems to be that a creditor is not to be damnified by a shareholder transferring his interest to an insolvent person after the debt is incurred, but that the retiring shareholder is not to be liable to a greater extent than is sufficient to pay the creditors what they would have received had not the shareholder retired. To work this out would be exceedingly difficult. It would

(3.) No past member shall be liable to contribute to the assets of the company unless it appears to the court that the existing members are unable to satisfy the contributions required to be made by them in pursuance of this act:

(4.) In the case of a company limited by shares, no contribution shall be required from any member exceeding the amount, if any, unpaid on the shares in respect of which he is liable as a present or past member:

(5.) In the case of a company limited by guarantee, no contribution shall be required from any member exceeding the amount of the undertaking entered into on his behalf by the memorandum of association (1):

(6.) Nothing in this act contained shall invalidate any provision contained in any policy of insurance or other contract whereby the liability of individual members upon any such policy or contract is restricted, or whereby the funds of the company are alone made liable in respect of such policy or contract:

(7.) No sum due to any member of a company, in his character of a member, by way of dividends, profits or otherwise, shall be deemed to be a debt of the company, payable to such member in a case of competition between himself and any other creditor not being a

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be necessary to determine what dividend each creditor would have received had there been no transfers to insolvent persons after the time of the contracting a debt to him, or within the year, as the case may be, and to call on the transferors to pay him the difference between that sum and what he would get supposing the transferors not to be liable at all. The fact, however, that a fresh and intricate calculation would have to be gone into for the case of each creditor, would probably make it impracticable to carry out this placitum according to the strict letter.

It has not been decided in what way the liability of past members will be determined. The Master of the Rolls thought that such past members would be made to contribute to the full extent of the capital not paid on their shares towards the old debts, so as to allow the later creditors to get a larger dividend from the present members; *Re Barned's Banking Co., e.p. Andrews*, 36 L. J., Ch. 802; L. R., 4 Eq. 458; the point, however, was not before him judicially, there was no argument, and on appeal, L. J. Rolt refused to express an opinion on the subject; 37 L. J., Ch. 87; L. R., 3 Ch. 161.

(1) See *ante*, sect. 9, p. 182.

25 & 26 Vict. c. 89, s. 38.

member of the company; but any such sum may be taken into account, for the purposes of the final adjustment of the rights of the contributories amongst themselves (1).

Part III.

Management and Administration of Companies and Associations under this Act.

Provisions for Protection of Creditors.

Registered office of company.

39. Every company under this act shall have a registered office to which all communications and notices may be addressed: if any company under this act carries on business without having such an office, it shall incur a penalty not exceeding five pounds for every day during which business is so carried on (2).

Notice of situation of registered office.

40. Notice of the situation of such registered office, and of any change therein, shall be given to the registrar, and recorded by him: until such notice is given the company shall not be deemed to have complied with the provisions of this act with respect to having a registered office.

Publication of name by a limited company.

41. Every limited company under this act, whether limited by shares or by guarantee, shall paint or affix, and shall keep painted or affixed, its name on the outside of every office or place in which the business of the company is carried on, in a conspicuous position, in letters easily legible, and shall have its name engraven in legible characters on its seal, and shall have its name mentioned in legible characters in all notices, advertisements and other official publications of such company, and in all bills of exchange, promissory notes, indorsements, cheques and orders for money or goods purporting to be signed by or on behalf of such company, and in all bills of parcels, invoices, receipts and letters of credit of the company.

(1) See *post*, s. 101.

(2) In this and the 19th section a penalty is imposed on the company alone, but in sects. 25, 27, 32, 34, a penalty is imposed on the directors. The mode of recovering penalties is prescribed by the 65th section.

Penalties on non-publication of name.

42. If any limited company under this act does not paint or affix, and keep painted or affixed, its name in manner directed by this act, it shall be liable to a penalty not exceeding five pounds for not so painting or affixing its name, and for every day during which such name is not so kept painted or affixed, and every director and manager of the company who shall knowingly and wilfully authorize or permit such default shall be liable to the like penalty; and if any director, manager or officer of such company, or any person on its behalf, uses or authorizes the use of any seal purporting to be a seal of the company whereon its name is not so engraven as aforesaid, or issues or authorizes the issue of any notice, advertisement or other official publication of such company, or signs or authorizes to be signed on behalf of such company any bill of exchange, promissory note, indorsement, cheque, order for money or goods, or issues or authorizes to be issued any bill of parcels, invoice, receipt or letter of credit of the company, wherein its name is not mentioned in manner aforesaid, he shall be liable to a penalty of fifty pounds, and shall further be personally liable to the holder of any such bill of exchange, promissory note, cheque or order for money or goods, for the amount thereof, unless the same is duly paid by the company (1).

Register of mortgages.

43. Every limited company under this act shall keep a register of all mortgages and charges specifically affecting property of the company, and shall enter in such register in respect of each mortgage or charge a short description of the property mortgaged or charged, the amount of charge created, and the names of the mortgagees or persons entitled to such charge: if any property of the company is mortgaged or charged without such entry as aforesaid being made, every director, manager or other officer of the company who knowingly and wilfully authorizes or permits the omission of such entry shall incur a penalty not exceeding fifty pounds: the register of mortgages required by this section shall be open to inspection by any creditor or member of the company at all reasonable times; and if such inspection is refused, any officer of the company refusing the same, and every director and

(1) See *Penrose* v. *Martyn*, El., Bl. & El. 499; and *ante*, p. 101.

25 & 26 Vict. c. 89, s. 43.

manager of the company authorizing or knowingly and wilfully permitting such refusal, shall incur a penalty not exceeding five pounds, and a further penalty not exceeding two pounds for every day during which such refusal continues (1); and in addition to the above penalty, as respects companies registered in England and Ireland, any judge sitting in chambers, or the vice-warden of the stannaries in the case of companies subject to his jurisdiction, may by order compel an immediate inspection of the register.

Certain companies to publish statement entered in schedule.

44. Every limited banking company and every insurance company, and deposit, provident or benefit society under this act shall, before it commences business, and also on the first Monday in February and the first Monday in August in every year during which it carries on business, make a statement in the form marked D. in the first schedule hereto (2), or as near thereto as circumstances will admit, and a copy of such statement shall be put up in a conspicuous place in the registered office of the company, and in every branch office or place where the business of the company is carried on; and if default is made in compliance with the provisions of this section the company shall be liable to a penalty not exceeding five pounds for every day during which such default continues, and every director and manager of the company who shall knowingly and wilfully authorize or permit such default shall incur the like penalty.

Every member and every creditor of any company mentioned in this section shall be entitled to a copy of the above-mentioned statement on payment of a sum not exceeding sixpence.

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(1) The mode of recovering penalties is prescribed by the 65th section.

Cost-book mining companies.

(2) The purser of every (cost-book mining company) shall, once at least in every four months, truly enter, in the cost-book of the company, accounts showing the actual financial position of the company at the end of the financial month of the company last preceding the time of entry, including a statement of all credits, debts and liabilities, and distinguishing in such accounts the amount of calls paid and calls not paid. 32 & 33 Vict. c. 19, s. 9.

Life insurance companies.

During the past session it was attempted to pass a bill to compel life insurance companies to publish accounts and statements as to their financial position.

List of directors to be sent to registrar.

45. Every company under this act, and not having a capital divided into shares, shall keep at its registered office a register containing the names and addresses and the occupations of its directors or managers, and shall send to the registrar of joint stock companies a copy of such register, and shall from time to time notify to the registrar any change that takes place in such directors or managers.

Penalty on company not keeping register of directors.

46. If any company under this act, and not having a capital divided into shares, makes default in keeping a register of its directors or managers, or in sending a copy of such register to the registrar in compliance with the foregoing rules, or in notifying to the registrar any change that takes place in such directors or managers, such delinquent company shall incur a penalty not exceeding five pounds for every day during which such default continues, and every director and manager of the company who shall knowingly and wilfully authorize or permit such default shall incur the like penalty (1).

Promissory notes and bills of exchange (2).

47. A promissory note or bill of exchange shall be deemed to have been made, accepted or indorsed on behalf of any company under this act, if made, accepted or indorsed in the name of the company by any person acting under the authority of the company, or if made, accepted or indorsed by or on behalf or on account of the company by any person acting under the authority of the company.

Prohibition against carrying on business with less than seven members.

48. If any company under this act carries on business when the number of its members is less than seven for a period of six months after the number has been so reduced, every person who is a member of such company during the time that it so carries on business after such period of six months, and is cognizant of the fact that it is so carrying on business with fewer than seven members, shall be severally liable for the payment of the whole debts of the company contracted during such time, and may be sued for the same, without the joinder in the action or suit of any other member.

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(1) The mode of recovering penalties is prescribed by the 65th section, *post.*

(2) See *ante*, p. 102.

25 & 26 Vict. c. 89, s. 49.

Provisions for Protection of Members.

General meeting of company.

49. A general meeting of every company under this act shall be held once at the least in every year (1).

Power to alter regulations by special resolution.

50. Subject to the provisions of this act, and to the conditions contained in the memorandum of association (2), any company formed under this act may, in general meeting, from time to time, by passing a special resolution in manner hereinafter mentioned, alter all or any of the regulations of the company contained in the articles of association or in the table marked (A) in the first schedule, where such table is applicable to the company, or make new regulations to the exclusion of or in addition to all or any of the regulations of the company; and any regulations so made by special resolution shall be deemed to be regulations of the company of the same validity as if they had been originally contained in the articles of association, and shall be subject in like manner to be altered or modified by any subsequent special resolution.

Definition of special resolution.

51. A resolution passed by a company under this act shall be deemed to be special whenever a resolution has been passed by a majority of not less than three-fourths of such members of the company for the time being entitled, according to the regulations of the company, to vote as may be present, in person or by proxy (3) (in cases where by the regulations of the company proxies are allowed), at any general meeting of which notice (4)

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(1) A general meeting is to be held within four months of registration. C. A. 1867, s. 39.

(2) See *ante*, p. 69.

(3) The commissioners of inland revenue are prohibited from stamping any instrument appointing a proxy, and a penalty of 50*l.* is imposed on any person making or signing such instrument, or on any person voting as a proxy under such instrument not duly stamped, and every vote or other act done under any such instrument not duly stamped is absolutely void. 7 & 8 Vict. c. 21, s. 7.

It was held that the 7 & 8 Vict. c. 21, referred only to powers of attorney whereby proxies are appointed to vote at one particular meeting of a joint stock company, or any adjournment thereof, and not to mere general powers of attorney which remain subject to the stamp duty of 30s. imposed by the 55 Geo. 3, c. 184. *Trinity House, Hull* v. *Beadle*, 13 Q. B. 175; 13 Jur. 557; 18 L. J., Q. B. 78.

Notice.

(4) Notice was given of an extraordinary meeting of shareholders of a company "for the purpose of considering and, if so determined on, of passing a resolution to wind up the company voluntarily." The meeting passed a resolution, that it had been proved to the

specifying the intention to propose such resolution has been duly given, and such resolution has been confirmed (1) by a majority of such members for the time being entitled, according to the regulations of the company, to vote as may be present, in person or by proxy (2), at a subsequent general meeting, of which notice has been duly given, and held at an interval of not less than fourteen days, nor more than one month from the date of the meeting at which such resolution was first passed: at any meeting mentioned in this section, unless a poll (3) is demanded by at least five members, a declaration of the chairman that the resolution has been carried shall be deemed conclusive evidence of the fact, without proof of the number or proportion of the votes recorded in favour of or against the same: notice of any meeting shall, for the purposes of this section, be deemed to be duly given and the meeting to be duly held, whenever such notice is given and meeting held in manner prescribed by the regulations of the company: in computing the majority under this section, when a poll is demanded, reference shall be had to the number of votes to which each member is entitled by the regulations of the company.

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satisfaction of the company that the company could not, by reason of its liabilities, continue its business, and that it was advisable to wind up the same. It was held that this resolution was invalid as an extraordinary resolution, the notice not showing that the company was unable, by reason of its liabilities, to continue its business, nor containing anything to show that it was proposed to pass such a resolution for winding-up the company as would not require confirmation by a subsequent meeting. *Re Bridport Old Brewery Co.*, L. R., 2 Ch. 191.

Confirmation.

(1) An executory instrument received the sanction of the first meeting of shareholders held for the purpose of passing a special resolution. At the second a deed professing to be made in pursuance of that instrument, but containing further and more elaborate provisions as to the details of the act agreed to be performed, was approved. *Semble*, the agreement contained in the first instrument was sanctioned by a special resolution, and any material variation introduced in the deed would be disregarded. *Clinch* v. *Financial Corp.*, 37 L. J., Ch. 281; L. R., 5 Eq. 450.

Stamps on proxies.

(2) By 27 Vict. c. 18, any letter, power of attorney, commission, factory mandate or other instrument in the nature thereof, for the sole purpose of appointing, nominating or authorizing any person to vote as a proxy or otherwise at one meeting of the proprietors or shareholders of any joint stock or other company, is to bear a penny stamp.

(3) See Table (A), *post*, pl. 42, 43.

25 & 26 Vict. c. 89, s. 52.

Provision where no regulations as to meetings (1).

52. In default of any regulations as to voting every member shall have one vote, and in default of any regulations as to summoning general meetings a meeting shall be held to be duly summoned of which seven days' notice in writing has

(1) With respect to meetings and proceedings of cost-book mining companies, 32 & 33 Vict. c. 19, enacts,

Sect. 4. *Majority in value at meeting to bind.*]—Except as otherwise provided by this act, or by the rules or regulations of any company, a resolution passed at a meeting of the company, by the votes of a majority in value of such of the shareholders as are present in person or represented by proxy at the meeting, shall be deemed the resolution of the meeting, and shall be binding on all the shareholders in the company, whether present or absent, but nothing in this clause shall authorize any ordinary meeting to transact any business which an ordinary meeting could not transact at the time of the passing of this act, except as is hereinafter provided.

Sect. 5. *Proceedings with special notice.*]—Where anything to be done by a company is by this act required to be done at a meeting with special notice, it shall not be valid if done otherwise than at a meeting notice whereof is served on the several shareholders not less than seven clear days before the day of the meeting, specifying the place, day and hour of meeting, and the business to be transacted thereat, or so much thereof as is required to be done with special notice.

Sect. 6. *Definition of special resolution.*]—A resolution passed by a company shall be deemed a special resolution within this act when it has been passed at a meeting with special notice, and has been confirmed at a subsequent meeting with special notice; the last-mentioned meeting being held not less than fourteen days and not more than one month after the meeting at which the resolution was first passed.

Sect. 7. *Regulations by special resolution.*]—A company may, by special resolution passed by not less than three-fourths in value of the shareholders present in person or represented by proxy at the meeting held for the purpose of confirming the resolution to be made special, from time to time alter the rules and regulations for the time being by custom or otherwise governing the company, and make new or additional rules or regulations in that behalf; and any rules or regulations so made by special resolution shall be of the like validity and effect as if they had been made at the original formation of the company; but nothing in this act shall authorize a company to make rules or regulations inconsistent with the provisions of this act, or shall abrogate any special rules or regulations existing at the passing of this act for the management of any company, or shall authorize the making of any special rule or regulation to enable a company existing at the passing of this act to borrow money.

Sect. 8. *Service of notices.*]—A notice to be served by a company for any purpose of this act on a shareholder shall be served personally, or shall be served by prepaid letter sent by post addressed to him at his address as entered in the cost-book, in which case the notice shall be taken as served at the time when the letter containing

been served on every member in manner in which notices are required to be served by the table marked (A) in the first schedule hereto, and in default of any regulations as to the persons to summon meetings five members shall be competent to summon the same, and in default of any regulations as to who is to be chairman of such meeting, it shall be competent for any person elected by the members present to preside.

Registry of special resolutions.

53. A copy of any resolution that is passed by any company under this act shall be printed and forwarded to the registrar of joint stock companies, and be recorded by him: if such copy is not so forwarded within fifteen days from the date of the confirmation of the resolution, the company shall incur a penalty not exceeding two pounds for every day after the expiration of such fifteen days during which such copy is omitted to be forwarded, and every director and manager of the company who shall knowingly and wilfully authorize or permit such default shall incur the like penalty.

Copies of special resolutions.

54. Where articles of association have been registered, a copy of every special resolution for the time being in force shall be annexed to or embodied in every copy of the articles of association that may be issued after the passing of such resolution: where no articles of association have been registered, a copy of any special resolution shall be forwarded in print to any member requesting the same on payment of one shilling, or such less sum as the company may direct: and if any company makes default in complying with the provisions of this section it shall incur a penalty not exceeding one pound for each copy in respect of which such default is made; and every director and manager of the company who shall knowingly and wilfully authorize or permit such default shall incur the like penalty.

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it was put into the post office; and in proving such service it shall be sufficient to prove that the letter was properly addressed and prepaid, and was put into the post office, and the time when it was put in.

As regards a company existing at the passing of this act, the address of a shareholder as known to the purser at the passing of this act shall be and remain entered in the cost-book as his address, unless and until he gives notice in writing to the contrary.

25 & 26 Vict. c. 89, s. 55.

Execution of deeds abroad.

55. Any company under this act may, by instrument in writing under its common seal, empower any person, either generally or in respect of any specified matters, as its attorney, to execute deeds on its behalf in any place not situate in the United Kingdom; and every deed signed by such attorney, on behalf of the company and under his seal, shall be binding on the company, and have the same effect as if it were under the common seal of the company.

Examination of affairs of company by inspectors (1).

56. The board of trade may appoint one or more competent inspectors to examine into the affairs of any company under this act, and to report thereon, in such manner as the board may direct, upon the applications following, (that is to say,)

(1.) In the case of a banking company that has a capital divided into shares, upon the application of members holding not less than one-third part of the whole shares of the company for the time being issued;

(2.) In the case of any other company that has a capital divided into shares, upon the application of members holding not less than one-fifth part of the whole shares of the company for the time being issued;

(3.) In the case of any company not having a capital divided into shares, upon the application of members being in number not less than one-fifth of the whole number of persons for the time being entered on the register of the company as members.

Application for inspection to be supported by evidence.

57. The application shall be supported by such evidence as the board of trade may require for the purpose of showing that the applicants have good reason for requiring such investigation to be made, and that they are not actuated by malicious motives in instituting the same; the board of trade may also require the applicants to give security for payment of the costs of the inquiry before appointing any inspector or inspectors.

Inspection of books.

58. It shall be the duty of all officers and agents of the company to produce for the examination of the inspectors all books and documents in their custody or power; any inspector may examine upon oath the officers and agents of the company in relation to its business, and may administer such oath accordingly; if any officer or agent refuses to produce any book or document hereby directed to be produced, or to answer any

question relating to the affairs of the company, he shall incur a penalty not exceeding five pounds in respect of each offence (1).

Result of examination, how dealt with.

59. Upon the conclusion of the examination the inspectors shall report their opinion to the board of trade; such report shall be written or printed, as the board of trade directs; a copy shall be forwarded by the board of trade to the registered office of the company, and a further copy shall, at the request of the members upon whose application the inspection was made, be delivered to them or to any one or more of them; all expenses of and incidental to any such examination as aforesaid shall be defrayed by the members upon whose application the inspectors were appointed, unless the board of trade shall direct the same to be paid out of the assets of the company, which it is hereby authorized to do.

Power of company to appoint inspectors.

60. Any company under this act may by special resolution (2) appoint inspectors for the purpose of examining into the affairs of the company: the inspectors so appointed shall have the same powers and perform the same duties as inspectors appointed by the board of trade, with this exception, that, instead of making their report to the board of trade, they shall make the same in such manner and to such persons as the company in general meeting directs; and the officers and agents of the company shall incur the same penalties, in case of any refusal to produce any book or document hereby required to be produced to such inspectors, or to answer any question, as they would have incurred if such inspector had been appointed by the board of trade.

Report of inspectors to be evidence.

61. A copy of the report of any inspectors appointed under this act, authenticated by the seal of the company into whose affairs they have made inspection, shall be admissible in any legal proceeding as evidence of the opinion of the inspectors in relation to any matter contained in such report.

Notices.

Service of notices on company.

62. Any summons, notice, order or other document (3) required to be served upon the company may be served by

(1) The mode of recovering penalties is prescribed by the 65th section, *post*, p. 208.

(2) Sect. 51, *ante*, p. 49.

(3) The 19 & 20 Vict. c. 47, s. 53, authorized the service by giving the summons, &c. "to any director, secretary or other principal

25 & 26 Vict. c. 89, s. 62.

leaving the same, or sending it through the post in a pre-paid letter addressed to the company, at their registered office (1).

Rules as to notices by letter.

63. Any document to be served by post on the company shall be posted in such time as to admit of its being delivered in the due course of delivery within the period (if any) prescribed for the service thereof; and in proving service of such document it shall be sufficient to prove that such document was properly directed, and that it was put as a pre-paid letter into the post office (2).

Authentication of notices of company.

64. Any summons, notice, order or proceeding requiring authentication by the company may be signed by any director, secretary or other authorized officer of the company, and need not be under the common seal of the company, and the same may be in writing or in print, or partly in writing and partly in print.

Legal Proceedings.

Recovery of penalties.

65. All offences under this act made punishable by any penalty may be prosecuted summarily before two or more justices, as to England, in manner directed by an act passed in

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officer of the company." By sect. 16 of the 15 & 16 Vict. c. 76, a writ of summons against a corporation may be served on certain officers therein mentioned, not including a director: it was held, that the 53rd section of the 19 & 20 Vict. c. 45, did not apply to a writ of summons, and that service of a writ of summons against an incorporated company registered under 19 & 20 Vict. c. 47, upon a director of such company, was bad service. *Towne* v. *London and Limerick Steam Ship Co.*, 5 C. B., N. S. 730; 5 Jur., N. S. 846; 20 L. J., C. P. 217.

(1) A company, though not formally dissolved, had practically ceased to exist, and had no officer or officers. The company having been made defendants in a suit, the Court of Chancery ordered the service of the bill on the late chairman and the secretary to be good service on the company. *Gaskell* v. *Chambers*, 26 Beav. 252; 5 Jur., N. S. 52; 28 L. J., Ch. 385.

As to the service of winding-up petitions, see General Order of November, 1862, r. 3, *post.*

Delivery of letters.

(2) It is sufficient to show that a letter containing a notice was posted at such a time as that by the due and usual course of the post it would be delivered on the proper day; and a party sending a letter is not answerable for a blunder of the post office. The post office mark is not conclusive as to the time when a letter was posted. See *Stocken* v. *Collen*, 7 M. & W. 515; *Smith* v. *Mullett*, 2 Camp. 208; *Hilton* v. *Fairclough*, *Ib.* 633. It seems that the delivery of a letter to a bell-man is a delivery to the post office. *Packe* v. *Alexander*, 3 M. & Sc. 789; but compare *Hawkins* v. *Rutt*, Peake, N. P. C. 186.

the session holden in the eleventh and twelfth years of the reign of her Majesty Queen Victoria, chapter forty-three, intituled "An Act to facilitate the Performance of the Duties of Justices of the Peace out of Sessions within England and Wales with respect to summary Convictions and Orders," or any act amending the same; and as to Scotland, before two or more justices or the sheriff of the county in manner directed by the act passed in the session of parliament holden in the seventeenth and eighteenth years of the reign of her Majesty Queen Victoria, chapter one hundred and four, intituled "An Act to amend and consolidate the Acts relating to Merchant Shipping," or any act amending the same, as regards offences in Scotland against that act, not being offences by that act described as felonies or misdemeanors; and as to Ireland, in manner directed by the act passed in the session holden in the fourteenth and fifteenth years of the reign of her Majesty Queen Victoria, chapter ninety-three, intituled "An Act to consolidate and amend the Acts regulating the Proceedings of Petty Sessions and the Duties of Justices of the Peace out of Quarter Sessions in Ireland," or any act amending the same.

11 & 12 Vict. c. 43.

17 & 18 Vict. c. 104.

14 & 15 Vict. c. 93.

Application of penalties.

66. The justices or sheriff imposing any penalty under this act may direct the whole or any part thereof to be applied in or towards payment of the costs of the proceedings, or in or towards the rewarding the person upon whose information or at whose suit such penalty has been recovered; and, subject to such direction, all penalties shall be paid into the receipt of her Majesty's exchequer, in such manner as the treasury may direct, and shall be carried to and form part of the consolidated fund of the United Kingdom.

Evidence of proceedings at meetings.

67. Every company under this act shall cause minutes of all resolutions and proceedings of general meetings of the company, and of the directors or managers of the company in cases where there are directors or managers, to be duly entered in books to be from time to time provided for the purpose; and any such minute as aforesaid, if purporting to be signed by the chairman of the meeting at which such resolutions were passed or proceedings had, or by the chairman of the next succeeding meeting, shall be received as evidence in all legal proceedings; and until the contrary is proved, every general meeting of the company or meeting of directors or managers in respect of the

Formalities.

25 & 26 Vict. c. 89, s. 67.

proceedings of which minutes have been so made shall be deemed to have been duly held and convened, and all resolutions passed thereat or proceedings had, to have been duly passed and had, and all appointments of directors, managers or liquidators shall be deemed to be valid, and all acts done by such directors, managers or liquidators shall be valid, notwithstanding any defect that may afterwards be discovered in their appointments or qualifications (1).

Proceedings at meetings.

(1) It has frequently been urged that a resolution made at a meeting, the minutes of which were entered and signed after the termination of the meeting, could not, by such minutes, be proved to have been made. But this objection has always been overruled, even where the minutes of each meeting ought in strictness to have been signed at that meeting.

Where a railway act required the proceedings of all meetings to be entered in some book, and signed by the chairman of such respective meetings, the signature at a subsequent meeting, at which the minutes of the former meeting were read over and confirmed, by a person who was chairman at both meetings, was admitted to be sufficient. *London and Brighton R. Co.* v. *Fairclough*, 3 Scott, N. R. 68; 2 Man. & G. 674; 2 Rail. C. 544; *West London R. Co.* v. *Beonant*, 3 Q. B. 873; *Miles* v. *Bough*, 3 Gale & D. 119; *Inglis* v. *Great Northern R. Co.*, 1 Macq. H. L. C. 112; 16 Jur. 895; *Southampton Dock Co.* v. *Richards*, and *Same* v. *Arnott*, 1 Scott, N. R. 219; 1 Man. & G. 448; Shelford on Railways, 4th ed., vol. ii., pp. 81, 143.

A resolution was passed at a meeting of directors reciting a list of shareholders in which T., who was a director, was put down for fifty shares. T. was not present at the meeting, and denied all knowledge of the resolution, though he was present at the next subsequent meeting. It was held, that in the absence of proof that the minutes of the previous meeting were duly read and confirmed at the subsequent meeting (which it appeared was not always done), the appellant was not bound by the insertion of his name for fifty shares for which he had applied. *Llanharry Hematite Iron Co., e.p. Tothill*, L. R., 1 Ch. 85; 35 L. J., Ch. 120.

The articles of association of a company provided that a minute signed by any person purporting to be the chairman of any meeting of directors was to be receivable in evidence without any further proof. An entry was made in the minute book stating the names of parties and the number of shares subscribed for, the name of the chairman who signed the minute being set down for 100 shares. The minute was signed not at the next meeting, but after proceedings to wind up the company had commenced. Held, that the minute was *primâ facie* evidence against all who were present, and, in the absence of counter-evidence, the chairman was liable for 100 shares. *Llanharry Hematite Iron Co., Roney's Case*, 33 L. J., Ch. 731.

In commenting on this section, L. J. Turner said, it meant no more than that all proceedings taken by the liquidator before the validity of his appointment was shown should be held valid when

Jurisdiction of vice-warden of stannaries (1).

68. In the case of companies under this act, and engaged in working mines within and subject to the jurisdiction of the stannaries, the court of the vice-warden of the stannaries shall have and exercise the like jurisdiction and powers, as well on the common law as on the equity side thereof, which it now possesses by custom, usage or statute in the case of unincorporated companies, but only so far as such jurisdiction or powers are consistent with the provisions of this act and with the constitution of companies as prescribed or required by this act; and for the purpose of giving fuller effect to such jurisdiction in all actions, suits or legal proceedings instituted in the said court, in causes or matters whereof the court has cognizance, all process issuing out of the same, and all orders, rules, demands, notices, warrants and summonses required or authorized by the practice of the court to be served on any company, whether registered or not registered, or any member or contributory thereof, or any officer, agent, director, manager or servant thereof, may be served in any part of England without any special order of the vice-warden for that purpose, or by such special order may be served in any part of the united kingdom of Great Britain and Ireland, or in the adjacent islands, parcel of the dominions of the crown, on such terms and conditions as the court shall think fit; and all decrees, orders and judgments of the said court made or pronounced in such causes or matters may be enforced in the same manner in which decrees, orders and judgments of the court may now by law be enforced, whether within or beyond the local limits of the stannaries; and the seal of the said court, and the signature of the registrar thereof, shall be judicially noticed by all other courts and judges in England, and shall require no other proof than the production thereof; the registrar of the said court, or the assistant registrar, in making sales under any decree or

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his appointment had been shown to be invalid; he did not think it was intended to give validity to his proceedings. L. J. Cairns also said, if the proceedings are not taken regularly under the act they are abortive, and the liquidator can neither make a good title on a sale of the assets nor enforce payment of calls from contributories. *Re Bridport Old Brewery Co.*, L. R., 2 Ch. 194, 195. See *post*, s. 129.

(1) See *ante*, p. 178, and *post*, sects. 81, 83, 108, 116, 120, 124, 125, 172.

25 & 26 Vict. c. 89, s. 68.

order of the court shall be entitled to the same privilege of selling by auction or competition without a licence, and without being liable to duty, as a judge of the Court of Chancery is entitled to in pursuance of the acts in that behalf.

Provision as to costs in actions brought by certain limited companies (1).

69. Where a limited company is plaintiff or pursuer in any action, suit or other legal proceeding, any judge having jurisdiction in the matter may, if it appears by any credible (2)

To what proceedings applicable.

(1) This provision applies to suits by the official liquidator. *Southampton Steam Boat Co.* v. *Rawlins*, 2 N. R. 544; *Southampton Steam Boat Co.* v. *Pinnock*, 11 W. R. 978.

An injunction in a suit by a limited company was refused till an undertaking as to damages should be given by some responsible person. *Anglo-Danubian Steam Navigation Co.* v. *Rogerson*, 3 N. R. 185.

This section is not applicable to a cross suit, as the nominal plaintiff is really defending himself.

A suit to set aside a policy on which an action is being brought is virtually a cross suit. *Accidental Marine Insurance Co.* v. *Mercati*, L. R., 3 Eq. 200.

A. filed a bill against B., the registered holder of shares in a company, and the company, for specific performance of an alleged contract by B. to transfer the shares to A., and for an injunction to restrain the company from transferring the shares to any one else than to A. The company thereupon filed a bill against A. and B., praying that it might be declared that the alleged contract was fraudulent and void, and that A. and B. were trustees of the shares for the company. The second suit was not so strictly in the nature of a cross suit that A. was deprived of his right to call on the company to give security for costs. *Washoe Mining Co.* v. *Ferguson*, L. R., 2 Eq. 371.

Delay by defendant.

Where the defendant had filed his answer knowing that the plaintiff company had spent all their capital and were in debt, but before he had notice that certain negotiations to raise a loan had failed, he was not precluded from calling on them to give security. *Washoe Mining Co.* v. *Ferguson*, L. R., 2 Eq. 371.

Evidence.

(2) An affidavit by the defendants' agents to the effect that there was reason to believe that in the event of the defendants being successful, the plaintiffs, the official liquidators of a limited company, would not have assets in hand to pay the defendants' costs, is, if unanswered, a sufficient ground for requiring the plaintiffs to find security for costs. *Southampton Steamboat Co.* v. *Rawlins*, 2 N. R. 544. The Master of the Rolls thought that in *Caillaud's Patent Tanning Co.* v. *Caillaud*, 28 L. J., Ch. 357; 5 Jur., N. S. 259; 26 Beav. 427; 7 W. R. 172, there must have been a conflict of evidence.

Where the plaintiff company alleged that but for the conduct of the defendant in the matter complained of there would be assets, the court would not go into the merits of the case, and security was required. *Argoad Colliery Co.* v. *South Buckley Coal Co.*, M. R. 23rd July, 1868.

testimony that there is reason to believe that if the defendant be successful in his defence the assets of the company will be insufficient to pay his costs, require sufficient security (1) to be given for such costs, and may stay all proceedings until such security is given.

Declaration in action against members.

70. In any action or suit brought by the company against any member to recover any call or other monies due from such member in his character of member, it shall not be necessary to set forth the special matter, but it shall be sufficient to allege that the defendant is a member of the company, and is indebted to the company in respect of a call made or other monies due whereby an action or suit hath accrued to the company (2).

Amount of security.

(1) A bond of 100*l.* was held sufficient security under C. A. 1857, s. 24. *The Australian Steamship Co.* v. *Flemming*, 4 K. & J. 407. The security under this section is not limited to 100*l.*; *Imperial Bank of China, India and Japan* v. *Bank of Hindustan, China and Japan*, L. R., 1 Ch. 437; the amount of security in that case was fixed at 300*l.* In *The Argoad Colliery Co.* v. *South Buckley Coal Co.*, M. R., 23rd July, 1868, the amount of security was fixed at 250*l.*

Declarations.

(2) The form of declaration given by the Companies Clauses Consolidation Act (8 Vict. c. 16, s. 26) is nearly the same as this.

On that form it was held that the allegation, that the defendant is the holder of shares, means that he was the holder at the time the call was made.

Therefore, where a declaration stated that the defendant, at the time of the commencement of the suit, was and still is the holder of shares, and at the time of the commencement of the suit was and still is indebted to the plaintiffs for calls on those shares, &c., whereby and by force of this act and the special acts, &c. an action accrued, &c., and the defendant pleaded that at the time of the commencement of the suit he was not the holder of the said shares, and also that he was not the holder of the shares at the time the call was made, the court, on motion, struck out the latter plea, and amended the declaration and first plea by striking out the words "at the commencement of the suit." *Belfast and County Down R. Co.* v. *Strange*, 1 Ex. 739; 5 R. C. 548.

But where the declaration stated that the defendant on the 27th November, 1848, and from thence hitherto hath been and still is the holder of forty shares in the said company, and then and at the time of the commencement of this suit was and still is indebted to the company in 300*l.* for calls, whereby an action hath accrued by virtue of this act and of two special railway acts, it was held, on special demurrer, that the declaration was not bad by reason of the averment as to the time of the holding of the shares and the debt to the company, or the statement as to the two special acts. *Midland Great Western R. Co. of Ireland* v. *Evans*, 4 Ex. 649; 19 L. J., Ex. 118; 6 R. C. 205.

25 & 26 Vict. c. 89 s. 70.

In *Newport R. Co.* v. *Hawes*, 3 Ex. 476, a declaration was held bad for not following the words of that act.

It has been held that a plea of set-off in respect of calls must either state the facts specially or pursue the form given by the act, and therefore a plea founded on the statute, but omitting the words "whereby an action hath accrued," was bad. *Moore* v. *Metropolitan Sewage Co.*, 18 L. J., Ex. 164; 3 Ex. 333.

The form of declaration given by the Companies Clauses Act has been held not to apply to an action against the executors of a deceased shareholder made during his lifetime. *Birkenhead, &c. R. Co.* v. *Cotesworth*, 19 L. J., Ex. 240; 6 R. C. 211; 5 Ex. 226.

Pleas.

In an action for calls under the Companies Clauses Consolidation Act, the defendant was allowed to plead, first, never indebted; secondly, that he was not a shareholder; and thirdly, a traverse of the calls having been made; but was not allowed to plead special facts relating to the validity of the issue of his shares. *Shropshire R. Co.* v. *Anderson*, 18 L. J., Ex. 232; 3 Ex. 401; 6 R. C. 56; 13 Jur. 175.

The defendant to an action for calls pleaded *nunquam indebitatus* only: it was held no admission that he was a shareholder, for that plea put in issue all the material allegations in the declaration. *Birkenhead, &c. R. Co.* v. *Brownrigg*, 19 L. J., Ex. 27; 4 Ex. 426; 6 R. C. 47.

In *The Waterford, &c. R. Co.* v. *Loyan*, 14 Jur. 346; 19 L. J., Q. B. 259; 14 Q. B. 672, the defendant was allowed to plead never indebted, a traverse that he was a shareholder, and certain pleas impeaching the validity of the call; but was not allowed also to plead special matters showing that he was not a shareholder.

In *The London and Brighton R. Co.* v. *Wilson*, 6 Bing. N. C. 135; 8 Scott, 347; 8 Dowl. P. C. 4; 1 R. C. 530, the defendant, in an action for calls under a special act of parliament, having pleaded that he was not indebted, and that he was not a proprietor, was not allowed to plead matters impeaching the validity of the calls.

A plea of forfeiture was bad for not averring that certain formalities had been complied with. *Edinburgh R. Co.* v. *Hibblewhite*, 6 M. & W. 707. This seems opposed to *Eastern Counties R. Co.* v. *Cook*, 4 Jur. 1185.

In an action for calls by a company founded under a colonial act, the calls being simple contract debts, never indebted was a good plea. *Welland R. Co.* v. *Blake*, 30 L. J., Ex. 161; 6 H. & M. 707.

In an action for calls under an act by which the directors were entitled to recover upon proving that the defendant was a proprietor, and that notice of the calls had been given according to the act, unless the defendant should prove that he had paid the full amount of his subscription, the defendant was allowed to plead, first, *nunquam indebitatus;* secondly, that he was not a proprietor; thirdly, that the directors had exercised their powers of declaring the shares forfeited, and had taken the steps thereupon prescribed by the act; but was not allowed to plead special matters impeaching the validity of the call. *South Eastern R. Co.* v. *Hebblewhite*, 4 Jur. 1184; 2 R. C. 250; 4 P. & D. 246; 12 Ad. & El. 497.

See further Shelford on Railways, 4th ed., vol. ii., p. 72 *et seq.*

Alteration of Forms.

Board of trade may alter forms in schedule.

71. The forms set forth in the second schedule hereto, or forms as near thereto as circumstances admit, shall be used in all matters to which such forms refer; the board of trade may from time to time make such alterations in the tables and forms contained in the first schedule hereto, so that it does not increase the amount of fees payable to the registrar in the said schedule mentioned, and in the forms in the second schedule, or make such additions to the last-mentioned forms, as it deems requisite; any such table or form, when altered, shall be published in the London Gazette, and upon such publication being made such table or form shall have the same force as if it were included in the schedule to this act, but no alteration made by the board of trade in the table marked (A) contained in the first schedule shall affect any company registered prior to the date of such alteration, or repeal, as respects such company, any portion of such table.

Arbitrations.

Power for companies to refer matters to arbitration.

72. Any company under this act may from time to time, by writing under its common seal, agree to refer and may refer to arbitration, in accordance with "The Railway Companies Arbitration Act, 1859" (1), any existing or future difference, question or other matter whatsoever in dispute between itself and any other company or person, and the companies parties to the arbitration may delegate to the person or persons to whom the reference is made power to settle any terms or to determine any matter capable of being lawfully settled or determined by the companies themselves, or by the directors or other managing body of such companies.

Provisions of 22 & 23 Vict. c. 59, to apply.

73. All the provisions of "The Railway Companies Arbitration Act, 1859," shall be deemed to apply to arbitrations between companies and persons in pursuance of this act; and in the construction of such provisions "the companies" shall be deemed to include companies authorized by this act to refer disputes to arbitration.

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(1) This act will be found below.

25 & 26 Vict. c. 89, s. 74.

Part IV.

Winding-up of Companies and Associations under this Act (1).

Preliminary.

Meaning of contributory.

74. The term "contributory" shall mean every person liable to contribute to the assets of a company under this act, in the event of the same being wound up: it shall also, in all proceedings for determining the persons who are to be deemed contributories, and in all proceedings prior to the final determination of such persons, include any person alleged to be a contributory.

Nature of liability of contributory (2).

75. The liability of any person to contribute to the assets of a company under this act (3) in the event of the same being

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Older winding-up acts.

(1) The older winding-up acts are all repealed by the Companies Act, 1862, except that, by section 207, a winding-up commenced before the 2nd November, 1862, is governed by the repealed acts. The old law with respect to winding-up may therefore be omitted.

7 & 8 Vict. c. 111.

The first act on the subject was the Winding-up Act, 1844, under which incorporated, and trading or commercial, companies might be adjudicated bankrupt and their affairs wound up in chancery.

11 & 12 Vict. c. 45, and 12 & 13 Vict. c. 108.

The Winding-up Acts, 1848, 1849, enabled contributories to have their companies wound up in the Court of Chancery. Under these acts creditors could not obtain a winding-up order, nor was there any provision to prevent their proceeding against single shareholders. These acts were amended by 21 & 22 Vict. c. 78, under which a "creditor's representative" could be appointed, and the creditors compelled to wait for payment out of the funds raised by contribution.

19 & 20 Vict. c. 47, 20 & 21 Vict. c. 14, and 21 & 22 Vict. c. 60.

Under the Joint Stock Companies Acts, 1856, 1857 and 1858, companies could be wound up either at the instance of a creditor or contributory, and could be also wound up voluntarily. Limited companies were to be wound up in the Court of Bankruptcy, other companies in the Court of Chancery.

(2) As to the effect of bankruptcy on the personal liability of shareholders, see *ante*, p. 128, and *post*, Addenda.

Interest on calls.

Notice of a call made in a winding-up required payment on a given day, and stated that if it was not paid on that day interest at 5*l.* per cent. would be charged. It was held that the statute 3 & 4 Will. 4, c. 42, was applicable, and that interest at 5*l.* per cent. from the day named in the notice of the call up to the time of payment must be paid. *Re Overend, Gurney & Co., Barrow's Case*, L. R., 3 Ch. 784; *ex p. Lintott*, L. R., 4 Eq. 184; 36 L. J., Ch. 510.

(3) Though the language is somewhat ambiguous, it is thought this section is intended to apply to companies not governed by this act.

Previously to the Companies Act, 1857, calls in a winding-up

being wound up, shall be deemed to create a debt (in England and Ireland of the nature of a specialty) accruing due from such person at the time when his liability commenced (1), but payable at the time or respective times when calls are made as hereinafter mentioned for enforcing such liability; and it shall be lawful in the case of the bankruptcy (2) of any contributory to prove against his estate the estimated value of his liability to future calls, as well as calls already made (3).

Contributories in case of death.

76. If any contributory dies either before or after he has been placed on the list of contributories hereinafter mentioned (4), his personal representatives, heirs and devisees shall be liable in a due course of administration to contribute to the assets of the company in discharge of the liability of such deceased contributory, and such personal representatives, heirs and devisees shall be deemed to be contributories accordingly.

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were not necessarily specialty debts. *Royal Bank of Australia, e.p. Robinson's Executors*, 6 D. M. & G. 572; 26 L. J., Ch. 95; 3 Jur., N. S. 1173; *North of England Banking Co., e.p. Harrison*, 10 Hare, 222; 22 L. J., Ch. 249. But by 20 & 21 Vict. c. 14, s. 13, such calls were made specialty debts.

Time to which debt relates back.

(1) An order to pay calls which is made after, but in respect of shares accepted before, the passing of the Bankruptcy Act, 1861, does not constitute a debt contracted after the passing of the latter act, the effect of this section being to carry the debt back to the date of the original contract. *Re Vaughan, e.p. Canwell*, 4 N. R. 39. A similar interpretation was put on the Winding-up Act, 1849. *Williams* v. *Harding*, L. R., 1 E. & I. 9.

After a resolution to wind a company up voluntarily has been passed, a debenture (*a*) issued by the company and in the hands of a shareholder can only be assigned subject to future calls. *China Steam Ship Co., e.p. Mackenzie*, 38 L. J., Ch. 199; L. R., 7 Eq. 240. In that case the Master of the Rolls is reported to have said, that where the assignment took place before the winding-up the section did not come into operation, but it is difficult to see how the words of this section can bear out that *dictum*. See also *Rhos Hall Iron Co., e.p. Birmingham Bank*, 38 L. J., Ch. 200, n.

(2) See sect. 77, *post*.

Future calls.

(3) A shareholder in a company in process of winding-up executed a composition deed under section 192 of the Bankruptcy Act, 1861. He scheduled only the amount of calls already made; if the whole amount for which he was liable had been scheduled, the dissenting creditors would have been a majority in value: the deed was held void. *Re Pickering, e.p. Pickering*, L. R., 4 Ch. 58.

(4) Sect. 98, *post*. See *ante*, p. 146.

(*a*) As to the nature of debentures, see *ante*, p. 43.

25 & 26 Vict. c. 89, s. 77.

Contributories in case of bankruptcy.

77. If any contributory becomes bankrupt, either before or after he has been placed on the list of contributories, his assignees shall be deemed to represent such bankrupt for all the purposes of the winding-up, and shall be deemed to be contributories accordingly, and may be called upon to admit to proof against the estate of such bankrupt, or otherwise to allow to be paid out of his assets in due course of law, any monies due from such bankrupt in respect of his liability to contribute to the assets of the company being wound up; and for the purposes of this section any person who may have taken the benefit of any act for the relief of insolvent debtors before the eleventh day of October, one thousand eight hundred and sixty-one, shall be deemed to have become bankrupt (1).

Contributories in case of marriage (2).

78. If any female contributory marries either before or after she has been placed on the list of contributories, her husband shall during the continuance of the marriage be liable to contribute to the assets of the company the same sum as she would have been liable to contribute if she had not married, and he shall be deemed to be a contributory accordingly.

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(1) Shortly after a call was made on a shareholder in a company which was being wound up under the Act of 1849, he was made a bankrupt. The call was proved in his bankruptcy: it was attempted to expunge the proof on the ground that all the debts for which the bankrupt's estate was liable on account of the company were not discharged. *Re Fenwick, e.p. Brown*, 19 L. J., B. 4; 3 De G. & Sm. 590.

A shareholder in a bank which had stopped payment became bankrupt, and afterwards, before he obtained his certificate, the company was ordered to be wound up; subsequently he obtained his certificate. It was held that under the 14th and 30th sections of the Winding-up Act, 1849, the official manager was entitled to prove for calls. *Monmouthshire and Glamorganshire Banking Co., e.p. Nicholas*, 21 L. J., B. 64; 2 D. M. & G. 271.

At the date of the winding-up of a company, the company was indebted to M., a contributory, in a sum exceeding what he was liable to pay as contributory. M. assigned all his property for the benefit of his creditors. The assignees sought to prove in the winding-up for the whole debt due to M. from the company. An order was made on M. to pay calls. M. applied to the court to have the order discharged. The order was discharged on the trustees abandoning their claim, and the official liquidator abandoning his claim. *Oxford and Canterbury Halls, e.p. Morton*, 17 W. R. 606.

(2) See *ante*, p. 125.

Winding-up by Court.

79. A company under this act may be wound up by the court as hereinafter defined (1), under the following circumstances, (that is to say,) Circumstances under which company may be wound up by court.

(1.) Whenever the company has passed a special resolution (2) requiring the company to be wound up by the court;

(2.) Whenever the company does not commence its business within a year from its incorporation (3) or suspends its business for the space of a whole year (4);

(3.) Whenever the members are reduced in number to less than seven (5);

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(1) Sect. 81, *post*, p. 221.

(2) As to special resolutions, see sects. 50, 51, *ante*, p. 202.

(3) The court will not exercise the discretionary power of winding-up a company which has not commenced its business within a year from its incorporation, where the past delay has been sufficiently accounted for, and there is no evidence of any improbability of its commencing business within a reasonable time. *Re Metropolitan R. Warehousing Co.*, 36 L. J., Ch. 827. Not commencing business.

On the other hand, where a company is clearly a bubble company, it will be ordered to be wound up without waiting till the year has expired. *Re The London and County Coal Co.*, L. R., 3 Eq. 353, where an order was made on a petition presented within three months of the date of incorporation. Bubble companies.

Compare *Madrid and Valentia R. Co.*, *e.p. Turner*, *post*, sect. 199 (3) (*a*) note.

(4) A company had amalgamated with another company which had power to buy up other companies. An order to wind it up was refused, as the company had either ceased to exist or was still carrying on business. If doing so improperly, a winding-up order was not the proper remedy. *National Financial Corp.*, 14 W. R. 907. "It is not abandonment of the objects of a company if, when entitled to three or four, it abandon one, provided such abandonment does not alter the fundamental principles of the company."—*Per* the Master of the Rolls. Therefore, where a company owned an English colliery and Norwegian iron mines in order to smelt Norway iron with English coal, and the directors thought it desirable to sell the colliery, a petition to wind up the company because it had ceased to carry on business was dismissed. *Norwegian Titanic Iron Co.*, 35 Beav. 223. Ceasing to carry on business.

Compare cases *ante*, pp. 69, 70.

(5) Other modes of winding-up companies with few shareholders are preferable. Small number of members.

Where there were seven shareholders and no debts, the court dismissed a winding-up petition with costs. *Sea and River Marine Insurance Co.*, L. R., 2 Eq. 545.

A petition was dismissed when there were only nine shareholders,

25 & 26 Vict. c. 89, s. 79.

(4.) Whenever the company is unable to pay its debts;

(5.) Whenever the court is of opinion that it is just and equitable that the company should be wound up (1).

Company when deemed unable to pay its debts.

80. A company under this act shall be deemed to be unable to pay its debts,

(1.) Whenever a creditor, by assignment or otherwise, to whom the company is indebted, at law or in equity,

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and no difficulties in the way of a voluntary winding-up. *Re Natal Co.*, 1 H. & M. 639.

(1) This *placitum* is restricted to matters *ejusdem generis* with the other *placita*.

Irregularities in the management of a company are not a sufficient reason to grant a winding-up order. *National Provincial Live Stock Co.*, 26 Beav. 153; 27 L. J., Ch. 266; *Anglo-Greek Steam Navigation Co.*, L. R., 2 Eq. 1; 35 Beav. 384.

The fact that the company has been acting *ultra vires* is no ground for granting a winding-up order. *Agriculturists Cattle Insurance Co., e.p. Spackman*, 18 L. J., 201; 1 M. & G. 170. In that case an attempt had been made, with the sanction of a majority of shareholders, to allow members to retire. *Re National Financial Corp.*, 14 W. R. 907, where an amalgamation with another company, had been acted upon.

A petition for winding-up a company alleged that a recent change in the management of a company had altered the nature of the business. The petition was dismissed without prejudice to any steps the dissatisfied shareholders might take by bill or otherwise to restrain proceedings *ultra vires*. *Re Factage Parisien*, 5 N. R. 227.

Carrying on business at a loss.

The *placitum* does not authorize the court to wind up a solvent company against the wishes of a majority of shareholders, because the business has been carried on at a loss, and the company appears likely to continue a losing concern.

Semble, nevertheless proof of the impossibility of carrying on the contemplated business would justify the making a winding-up order even in the absence of insolvency. *Re Suburban Hotel Co.*, L. R., 2 Ch. 727; 36 L. J., Ch. 710. This was followed in *Re Joint Stock Coal Co., e.p. Green*, L. R., 8 Eq. 146; 38 L. J., Ch. 429; 17 W. R. 585.

The British Oil Co., 15 L. T. 606, was overruled by these decisions.

A limited company had lost more than half its capital, by a change of management had very much reduced the weekly losses, and held out a prospect of ultimate gain. It was held, on appeal, that a winding-up order made in the court below ought to be suspended until the shareholders had had an opportunity of adopting or rejecting the winding-up petition. *Re Factage Parisien*, 5 N. R. 178; 34 L. J., Ch. 140.

However, in *The Great Northern Copper Mining Co. of Australia*, 17 W. R. 462, a mining company was ordered to be wound up against the wish of a majority of shareholders, where no profits had been derived from the workings for the last four years, and the company was not able to pay existing liabilities without a further call upon the shareholders.

in a sum exceeding fifty pounds then due, has served on the company, by leaving the same at their registered office (1), a demand under his hand requiring the company to pay the sum so due, and the company has for the space of three weeks (2) succeeding the service of such demand neglected to pay such sum, or to secure or compound for the same to the reasonable satisfaction of the creditor (3);

(2.) Whenever, in England and Ireland, execution or other process issued on a judgment, decree or order obtained in any court in favour of any creditor, at law or in equity, in any proceeding instituted by such creditor against the company, is returned unsatisfied in whole or in part (4);

(3.) Whenever in Scotland, the induciæ of a charge for payment on an extract decree, or an extract registered bond, or an extract registered protest have expired without payment being made;

(4.) Whenever it is proved to the satisfaction of the court that the company is unable to pay its debts.

Definition of "the court."

81. The expression of "the court" as used in this part of this act, shall mean the following authorities, (that is to say,)

In the case of a company engaged in working any mine within and subject to the jurisdiction of the stannaries,—the court of the vice-warden of the stannaries, unless the

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(1) If there is no registered office the demand may be served at an unregistered office. *British and Foreign Gas Generating Apparatus Co.*, 13 W. R. 619.

(2) The three weeks must have expired before presentation of the petition for winding-up. *Re Catholic Publishing and Bookselling Co.*, 33 L. J., Ch. 325.

(3) Any creditor or contributory may take advantage of a demand requiring payment of his debt served by another on a company, and the neglect of the company to pay, secure or compound for the same within the time prescribed by sect. 68, clause 1, of the 19 & 20 Vict. c. 47, as a foundation for a petition to wind up the company. *Anglesea Coal and Coke Co., e.p. Owen*, 4 L. J., Ch. 684.

(4) An assignee of a judgment debt of less than 50*l.*, on which execution had issued with a return of *nulla bona*, was held entitled under a power of attorney contained in his assignment to petition to wind up the company. *London and Birmingham Flint Glass and Alkali Co., e.p. Wright*, 28 L. J., B. 17; 1 De G. & J. 257; 7 W. R. 539.

25 & 26 Vict. c. 89, s. 81.

vice-warden certifies that in his opinion the company would be more advantageously wound up in the High Court of Chancery, in which case "the court" (1) shall mean the High Court of Chancery;

In the case of a company registered in England that is not engaged in working any such mine as aforesaid,—the High Court of Chancery;

In the case of a company registered in Ireland, the Court of Chancery in Ireland;

In all cases of companies registered in Scotland, the Court of Session in either division thereof:

Provided, that where the Court of Chancery in England or Ireland makes an order for winding-up a company under this act, it may, if it thinks fit, direct all subsequent proceedings for winding-up the same to be had in the Court of Bankruptcy having jurisdiction in the place in which the registered office of the company is situate; and thereupon such last-mentioned Court of Bankruptcy shall, for the purposes of winding-up the company, be deemed to be "the court" within the meaning of the act, and shall have for the purposes of such winding-up all the powers of the High Court of Chancery, or of the Court of Chancery in Ireland, as the case may require (2).

Jurisdiction.

(1) Where a company has been established for the purpose of working mines within the district of the stannaries, the fact that some of the objects of the company are to be carried out beyond the district does not exempt the company from the jurisdiction of the Stannaries Court. *Penhale and Lomax, &c. Mining Co.*, L. R., 2 Ch. 398; 26 L. J., Ch. 515.

A company was formed for the purpose of purchasing and working a mine in Cornwall, and was registered in the registry office of the Stannaries Court, but its registered office was in London. It was held that the jurisdiction to wind it up was in the Stannaries Court, and not in the Court of Chancery. *East Botallick Mining Co.*, 34 L. J., Ch. 81.

Where a shareholder was being sued in London, the company having ceased to carry on business, and the vice-warden having no power to stay the action, it was held that it was a proper case to make a winding-up order in the Court of Chancery. *Wheal Anne Mining Co.*, 30 Beav. 601.

(2) Where the Court of Chancery had made an order in a winding-up case for the further proceedings to be taken in a particular court of bankruptcy: it was decided, that such court had jurisdiction to commit persons disobeying its order in such further proceedings. *E.p. Hirtzel, Re United General Bread and Flour Co.*, 30 L. J., Ch. 88; 2 D. F. & J. 653.

82. Any application to the court for the winding-up of a company under this act shall be by petition (1); it may be presented by the company, or by any one or more creditor or creditors, contributory or contributories (2) of the company, or by all or any of the above parties, together or separately (3); Application for winding-up to be made by petition.

The Court of Chancery may refer a winding-up to a county court (C. A. 1867, s. 41), or transfer it from one county court to another. (*Ib.*, s. 42.)

Any society registered under the Industrial and Provident Societies Act, 1862, may be wound up under this act either by the court or voluntarily. The court having jurisdiction in such case will be the county court of the district in which the office of the society is situated. 25 & 26 Vict. c. 87, s. 17.

(1) An application to discharge a winding-up order may be made by motion. *Metropolitan Carriage Co., e.p. Clarke*, 1 K. & J. 22.

(2) Except under special circumstances, an order to wind up a company will not be made on the petition of a shareholder whose shares are fully paid up. The petition was dismissed in *Patent Artificial Stone Co.*, 34 L. J., Ch. 330; 34 Beav. 185; *Patent Bread Machinery Co.*, 14 W. R, 787; *Lancashire Brick and Tile Co.*, 34 L. J., Ch. 331; 34 Beav. 330, where the Master of the Rolls said, that in some cases an order was made on the petition of a paid-up shareholder. *National Savings Bank Association*, L. R., 1 Ch. 547; *London Armoury Co.*, 11 Jur., N. S. 963. Who are contributories.

In *The Cheshire Salt Co.*, 1 N. R. 533, V. C. Kindersley thought an order would not be made on the petition of a fully paid-up shareholder.

Past shareholders who were sued for debts of their company under the Winding-up Act, 1848, could obtain a winding-up order. *Times Fire Assurance Co.*, 31 L. J., Ch. 478; 30 Beav. 596.

A member of a managing committee, who had been obliged to pay tradesmen's debts, was entitled to an order. *Eastern Counties Junction R. Co., e.p. Cookes*, 3 De G. & Sm. 148.

A winding-up order was made on a petition by an unregistered transferee of scrip certificates, L. J. Turner dissenting. *Littlehampton and Havre Steam Ship Co., e.p. Ellis*, 34 L. J., Ch. 237. See also sect. 74, *ante*, p. 216.

(3) An order was made on the petition of a person resident abroad; he was required to give the same security as a plaintiff residing out of the jurisdiction in the case of a suit in equity. *Royal Bank of Australia, e.p. Latta*, 3 De G. & Sm. 186. Circumstances personal to petitioner.

Shareholders who were being sued for calls have obtained winding-up orders. *Birch Torr Vitifer Co.*, 1 K. & J. 204; *York and London Assurance Co., e.p. Hodsell*, 19 L. J., Ch. 234.

Where a person had made an arrangement with his creditors, the court refused to make an order, his trustees not having been served. *Cameron's Coalbrook Co., e.p. Walter*, 2 De G. & Sm. 3.

Where the petitioner was a creditor for 65*l.* only, and the debt was attached in the Lord Mayor's Court, the petition was dismissed

25 & 26 Vict. c. 89, s. 82.

and every order which may be made on any such petition shall operate in favor of all the creditors and all the contributories of the company in the same manner as if it had been made upon the joint petition of a creditor and a contributory (1).

Power of court.

83. Any judge of the High Court of Chancery may do in chambers any act which the court is hereby authorized to do; and the vice-warden of the stannaries may direct that a petition for winding-up a company be heard by him at such time and at such place within the jurisdiction of the stannaries, or

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with costs. *European Banking Co., e.p. Baylis*, L. R., 2 Eq. 521; 35 L. J., Ch. 690.

An order was made on petition by a clerk for unpaid salary. *Roshall Fishery, &c. Co.*, 11 W. R. 84.

Where the petitioning contributory had bought shares on purpose to obtain a winding-up order at the instigation of a paid-up shareholder, the order was made. *Cheshire Patent Salt Co.*, 1 N. R. 533.

But by C. A. 1867, s. 40, a purchaser of shares must have held them six months before he is entitled to petition for a winding-up order.

A shareholder in a joint stock company presented a petition (against the approval of the majority of the shareholders) for the winding-up of the company, alleging the loss of three-fourths of its capital (under section 67 of the Act 19 & 20 Vict. c. 47); but the court, being satisfied of the bad faith of the petitioner, dismissed the petition. *Metropolitan Saloon Omnibus Co., e.p. Hawkins*, 28 L. J., Ch. 830.

The directors of a company transferred all its assets, liabilities and business to another company under a deed of amalgamation, by which it was provided that the shareholders in the old company should exchange their shares for shares in the new company, and that the new company should indemnify the old company in respect of all its debts and liabilities. Some only of the shareholders in the old company executed the deed of amalgamation, and became shareholders in the new company. The new company disputed their liability to carry out the arrangement for the amalgamation, and did not pay the debts of the old company. The new company subsequently assigned their business, but not their assets, to another company. Upon a petition for the winding-up of the old company, presented by a shareholder in the new company, who had originally been a shareholder in the old company, and which was supported by the shareholders of the old company who had executed the deed of amalgamation, but opposed by those who had not, the court refused to order the old company to be wound up, and dismissed the petition with costs as against those shareholders who had been served, but without costs as against those shareholders who had voluntarily appeared. *In re The Anglo-Australian, &c. Co., e.p. Smith; In re The British Provident Society, e.p. Collins*, 1 De G. & Sm. 113.

(1) See *post*, General Order of November, 1862, Rules 1—5, as to the petition, and Rules 6, 7, as to orders for winding-up.

within or near to the place where the registered office of the company is situated, as he may deem to be convenient to the parties concerned, or (with the consent of the parties concerned) at any place in England; and all orders made thereupon shall have the same force and effect as if they had been made by the vice-warden sitting at Truro or elsewhere within the jurisdiction of the court, and all parties and persons summoned to attend at the hearing of any such petition shall be compellable to give their attendance before the vice-warden by like process and in like manner as at the hearing of any cause or matter at the usual sitting of the said court; and the registrar of the court may, subject to exception or appeal to the vice-warden as heretofore used, do and exercise such and the like acts and powers in the matter of winding-up as he is now used to do and exercise in a suit on the equity side of the said court (1).

Commencement of winding-up (2).

84. A winding-up of a company by the court shall be deemed to commence at the time of the presentation (3) of the petition for the winding-up.

Court may grant injunction.

85. The court may, at any time after the presentation (3) of a petition for winding-up a company under this act, and before making an order for winding-up the company, upon the appli-

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(1) The Stannaries Act, 1869 (32 & 33 Vict. c. 19), s. 38, is as follows:—

Hearing of petition for winding-up.]—The provision of section eighty-three of the Companies Act, 1862, contained in second paragraph thereof, shall be amended and read as follows; namely, that the vice-warden may direct that petitions to wind up a company shall be heard by him at such time or place as he may think fit within the stannaries, or within or near to the place where the registered or other chief office of the company is situate, or if such office be distant one hundred and fifty miles or more from Truro (measured by the public railways), then in London or Westminster; or with the consent of the party or parties petitioning, and of the company represented by its secretary, purser, or other proper officer, the hearing may be in any part of England; and all orders made by the vice-warden on such hearing in any of the above cases shall be as valid and effectual as if they had been made at Truro.

(2) Section 84 does not apply to a winding-up under supervision. *Hodgkinson* v. *Kelly*, L. R., 6 Eq. 496; 37 L. J., Ch. 837.

(3) In *Plym River Slate Slab Co.*, June, 26, 1866, V. C. Stuart held that the time of presentation in sect. 85, meant the time of the Lord Chancellor's answering the petition. But under s. 84, it was held otherwise. *Oriental Commercial Bank, e.p. Barge*, L. R., 5 Eq. 420. The point is not mentioned in the judgment, but see argument of Mr. Giffard.

25 & 26 Vict. c. 89, s. 85.

cation of the company, or of any creditor or contributory of the company, restrain further proceedings in any action, suit or proceeding against the company, upon such terms as the court thinks fit (1); the court may also at any time after the presentation (2) of such petition, and before the first appointment of liquidators, appoint provisionally an official liquidator of the estate and effects of the company (3).

Course to be pursued by court on hearing petition.

86. Upon hearing the petition the court may dismiss the same with or without costs, may adjourn the hearing condi-

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(1) *In re The Hill Pottery Co.*, L. R., 1 Eq. 649, a sheriff was restrained from selling property seized under a writ of *fi. fa.* before the presentation of the petition.

See also sections 87, 138, 163, 197, 198, 201 and 202.

(2) See note (3), *ante*, p. 225.

When provisional liquidator will be appointed.

(3) In *The Rockall Fishing Co.*, 11 W. R. 84, V. C. Wood hesitated to appoint a provisional liquidator, but did so with liberty for any person to apply to vary the order.

In *The Railway Finance Co.*, 14 W. R. 754, an order appointing a provisional liquidator was discharged by the Master of the Rolls, who said he did not appoint a provisional liquidator unless it appeared that the affairs could not be carried on.

In *The London, Hamburg and Continental Exchange Bank, Emerson's Case*, L. R., 2 Eq. 231; 35 L. J., Ch. 655, the Master of the Rolls laid down a rule not to appoint a provisional liquidator without the consent of the company.

A provisional liquidator will not be appointed on a petition not presented by the company, unless the court is satisfied that it is not opposed. *Re Cilfolden Boat Building Society*, L. R , 3 Ch. 462.

In *The West Worthing Water Works Co.*, 18 L. T. 849, an official liquidator was appointed provisionally on motion, the company concurring in the application.

See *post*, General Order of November, 1862, rule 15, as to the provisional appointment of official liquidators.

Status of provisional liquidator.

Under the old winding-up law it was held, that the interim manager was not included in the word official manager; *Brettel* v. *Dawes*, 21 L. J., Ex. 94; 7 Ex. 307; but it is presumed, from the wording of this section and s. 96, that the status of a provisionally appointed official liquidator is the same as that of an ordinary official liquidator.

A petition was presented to wind up a company. W. was appointed provisional liquidator. Before the petition came on to be heard it was resolved to wind up the company voluntarily, and a petition to continue the winding-up was presented. W. was also appointed liquidator in the voluntary winding-up. His costs of appearance were refused. The Master of the Rolls said he was in the same position as a receiver *pendente lite*. *General International Agency Co.*, 34 L. J., Ch. 337; 5 N. R. 265.

tionally or unconditionally, and may make any interim order, or any other order that it deems just (1).

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(1) As to orders to wind up, see *post*, General Orders of November, 1862, rules 6, 7.

Adjournment of petition.

As far as possible the court will avoid suspending or adjourning a petition on account of the inconvenience of keeping it hanging over the head of the company, as the winding-up order, if made subsequently, would relate back (s. 84) to the time of the presentation of the petition, and avoid or imperil acts done in the interval. *Metropolitan Railway Warehousing Co.*, 36 L. J., Ch. 827.

Where it was doubtful whether there ever had been such a company as that sought to be wound up, a reference was directed to inquire whether the alleged company ever existed, and, if it had existed, whether it was proper that it should be wound up. *North Western Trunk Co.*, 3 De G. & Sm. 266.

In *The Direct London and Manchester R. Co., e.p. Pocock*, 1 De G. & Sm. 731, the petition was ordered to stand over to allow the petitioner to see accounts.

A person who had taken shares in a company, on its taking over the business of another company to which he had belonged, petitioned to wind up the first company. This company had contracted to sell their business to a third company. Litigation was pending respecting the first amalgamation. V. C. Kindersley was not satisfied that there was a case for a winding-up, but ordered the petition to stand over, with liberty for any person to apply. *The British Provident Assurance Society, e.p. Collins's Executors*, 8 W. R. 170; 1 Dr. & Sm. 113.

The pendency of a suit to make directors personally account was not a sufficient reason to prevent the court making an order at once on the petition of contributories. *Marylebone Joint Stock Banking Co., e.p. Walker, e.p. Troutbeck*, 18 L. J., Ch. 81; 1 De G. & Sm. 585.

The circumstance that there are policies of a life insurance company still in force, and that the liabilities upon them cannot be settled for many years, is not sufficient to render it inexpedient to make an order for winding-up such company. *Universal Tontine Life Insurance Co., e.p. Dee*, 3 De G. & Sm. 112.

Course to be pursued where debt is disputed.

Where there is a *bonâ fide* dispute as to the existence of the debt, the non-payment whereof is made the foundation for the petition, the convenient and proper course is not to try the question of debt upon the petition, but to adjourn the hearing until the debt has been established at law. *Catholic Publishing and Bookselling Co.*, 33 L. J., Ch. 325.

Rhydydefed Colliery Co., 3 De G. & J. 80, was a similar case under the Act of 1856.

Where the amount was disputed the petition was adjourned. *Brighton Club and Norfolk Hotel Co.*, 35 Beav. 204.

A petition by the indorsee for value of promissory notes after they were overdue, was ordered to stand over to allow him to bring an action at law. *Re Universal Bank*, 14 W. R. 906.

The sole creditor of a company petitioned to have it wound up. He claimed under a judgment upon which execution had been issued

25 & 26 Vict. c. 89, s. 87.

87. When an order has been made for winding-up a company under this act no suit, action or other proceeding shall be proceeded with or commenced against the company except with

Actions and suits to be

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and a return of *nulla bona* had been made, but the judgment was of a suspicious nature and was alleged to have been obtained by fraud. It was held that the company ought to have an opportunity of impeaching the debt by bill in equity, and the petition was ordered to stand over for that purpose. *Bowes* v. *Hope Mutual Life Assurance, &c. Society*, 35 L. J., Ch. 574; 11 H. L. 389; 13 W. R. 790.

On petition to wind up a company by a debenture holder, where the company admitted the validity of the debenture but contended that the interest was only payable out of the profits, the court took upon itself to decide the dispute at the hearing of the petition, and made the winding-up order without waiting till the debt had been established at law. *Imperial Silver Quarries Co.*, 16 W. R. 1220.

Course pursued when there are several petitions,

Two petitions were presented in two different branches of the court, one three days after the other. The petition presented last came on for hearing first. V. C. Stuart refused on the hearing to have it transferred into the other branch of the court, but made an order for winding-up the company. The first petition was afterwards transferred into his branch of the court. He ordered the costs of that petition, as well as the other, to come out of the estate. *British and Foreign Gas Generating Co.*, 13 W. R. 649.

Two petitions were presented, one by a paid-up shareholder, the other by a person who had only paid a deposit. The company did not appear to be insolvent. One order was made on the two petitions, and the conduct of the matter given to the paid-up shareholder. *Constantinople and Alexandria Hotels Co.*, 13 W. R. 831.

Where there are several petitions with respect to costs the court will look at the circumstances of each petition separately, and if an order would have been made on a petition if it had been the only one presented, that is a reason for allowing the petitioner costs. *European Banking Co., e.p. Baylis*, L. R., 2 Eq. 521; 35 L. J., Ch. 690.

A petition was presented in one branch of the court, and a liquidator was appointed provisionally, but the petitioner did not prosecute the petition. Another petition was presented in another branch of the court, and an order was made on that petition to wind up the company. *Re The Consolidated Bank*, 14 L. T., N. S. 686.

The fact that a second petitioner has notice of another petition is a reason for dismissing it with costs. Where, however, a first petition was by a company claiming to be creditors, and the second petition was by a shareholder who disputed the debt, and alleged that his company was in the hands of the petitioning company, and charged the directors with misconduct, the Master of the Rolls, thinking there was a case for inquiry, made an order on both petitions, giving the conduct of the winding-up to the second petitioner. *Re Lundy Granite Co.*, 19th November, 1868.

when there are two companies.

It is improper to make one order for winding-up two companies, though their affairs may be mixed up. *Shields Marine Association, e.p. Lee and Moore*, 16 W. R. 69.

the leave of the court, and subject to such terms as the court may impose (1). stayed after order for winding-up.

A petition was dismissed with costs against the company and against directors who were charged with misconduct, but other shareholders, who had appeared to resist the order being made, were not allowed their costs. *Anglo-Greek Steam Co.*, L. R., 2 Eq. 1. Costs when petition is dismissed.

Where a petition is dismissed the petitioner will generally be ordered to pay the costs of the company opposing the petition, and of every person against whom a personal charge is made by the petition and who appears and disproves such charge and is otherwise free from blame; but no other person appearing will be allowed costs. *Re Humber Iron Works*, L. R., 2 Eq. 15.

In a case where a company and shareholders, though not served, appeared on a petition after notice that it was intended to withdraw the petition, they were held entitled to costs incurred up to the time of notice. *Re Marlborough Club Co.*, L. R., 1 Eq. 216; 35 L. J., Ch. 146.

A petition was ordered to stand over to obtain the opinion of the shareholders; they wished to continue the business. The court being of opinion that at the time of the presentation of the petition there was a *bonâ fide* case for petitioning, dismissed the petition without costs. *Re Great Northern Copper Mining Co.*, 14 W. R. 705.

In one case V. C. Stuart gave three sets of costs to shareholders on account of the conduct of the petitioner. *Re Albion Bank*, 15 W. R. 148.

V. C. Kindersley, in dismissing a petition, gave one set of costs to shareholders, and one to creditors opposing. *Re European Banking Co., e.p. Baylis*, L. R., 2 Eq. 521; 55 L. J., Ch. 690.

The Master of the Rolls laid down the rule that where a winding-up order is made the petitioner and the company will have their costs out of the estate, and the shareholders and creditors who appear to support the petition will have one set of costs out of the estate between them. *Re Humber Iron Works*, L. R., 2 Eq. 15. Where an order is made.

V. C. Wood said, it was not a matter of course that the company should have to bear the costs; they might ultimately be borne by the petitioner. *Court Grange Mining Co., e. p. Sedgwick*, 2 Jur., N. S. 949.

Costs occasioned by opposition must be borne by the persons opposing. *Re Bosworthen Mining Co.*, 26 L. J., Ch. 612.

Where a petition of appeal presented by a company to discharge a winding-up order was dismissed, the form of order was to direct the costs of the respondent to come out of the estate, and to make no order as to the costs of the company. *National Savings Bank Association*, L. R., 1 Ch. 574.

Where a petitioner had instituted a suit for the same object, the costs of that suit were left to be dealt with in the suit. *Bastenne Bitumen Co.*, 3 De G. & Sm. 265.

(1) Under a similar provision in the Act of 1857 (20 & 21 Vict. c. 78, s. 7), a rule was granted by the Court of Common Pleas to stay proceedings in an action commenced without leave of the court. Byles, J., said: "The more natural construction is that the court in which the action is brought is the court to stay proceedings." *Thomas* v. *Wells*, 33 L. J., C. P. 211; 16 C. B. 508. Practice.

25 & 26 Vict. c. 89, s. 88.

Copy of order to be forwarded to registrar.

88. When an order has been made for winding-up a company under this act, a copy of such order shall forthwith be forwarded by the company to the registrar of joint stock companies, who shall make a minute thereof in his books relating to the company.

Power of court to stay proceedings.

89. The court may at any time after an order has been made for winding-up a company, upon the application by motion of

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Under the Act of 1848: see *M'Gregor* v. *Keily*, 19 L. J., Ex. 126; 4 Ex. 801.

But the present practice is to move for an injunction in the court in which the company is being wound up. *Waterloo Life, &c. Assurance Co.*, 32 L. J., Ch. 371; 31 Beav. 589, and other cases *infra*. Also see ss. 138, 163, 201, 202, *post*.

Application for leave to proceed is to be made in that branch of the court in which the winding-up order is made. *Wilson* v. *Natal Investment Co.*, 36 L. J., Ch. 312.

Costs of an application in one branch of the court to sue in another were given to the plaintiff in the suit. *Henderson* v. *Lacon*, L. R., 5 Eq. 249.

What proceeding will be allowed to go on.

Leave was given to continue a suit to restrain trespass. *Wyley* v. *Exall Mining Co.*, 33 Beav. 539.

Actions were allowed to go on which turned on mutual dealings and questions of fact which ought to be sifted thoroughly. *Contract Corp., e.p. Bateman* (1), 15 W. R. 118. In *Sea, Fire and Life Assurance Co., e.p. Gwyn*, 1 Jur., N. S. 300; *London and Birmingham Extension, &c. R. Co., e.p. Higgins*, 2 Jur., N. S. 178, actions were allowed to go on as there were legal questions to be tried.

In a suit to enforce a vendor's lien against an official liquidator, an injunction was granted to prevent the official liquidator selling the property. *Blakely* v. *Dent*, 16 W. R. 663.

Leave to institute a foreclosure suit was refused, it being competent for the applicant to obtain the proper order in the winding-up proceedings. *St. Cuthbert Lead Smelting Co.*, 35 Beav. 384.

Where the company had vexatiously delayed an action by a creditor, an *ex parte* injunction was dissolved. *Re The Imperial Steam and Household Coal Co.*, 37 L. J., Ch. 517; 18 L. T., N. S. 390.

The court refused to allow distress for rent to be made where all the rent accrued due before the premises came into the hands of the official liquidator. *Re Kingston Royal Marine Hotel Co.*, 15 W. R. 978.

See further, sections 85, 138, 163, 197, 198, 201 and 202.

Effect on third parties.

This section is not intended to prevent the prosecution of suits against third parties to which the company is a necessary party. *Per* L. J. Turner. And, therefore, in a suit of that nature the plaintiff was allowed to proceed on his undertaking not to enforce any decree he might obtain against the company without the leave of the court. *M'Ewen* v. *London, Bombay and Mediterranean Bank*, 15 W. R. 245.

A private individual has no right to have proceedings stayed. *Wells* v. *Estates Investment Co.*, 15 W. R. 762.

any creditor or contributory of the company, and upon proof to the satisfaction of the court that all proceedings in relation to such winding-up ought to be stayed, make an order staying the same, either altogether or for a limited time, on such terms and subject to such conditions as it deems fit (1).

Effect of order on share capital of company limited by guarantee.

90. When an order has been made for winding-up a company limited by guarantee and having a capital divided into shares, any share capital that may not have been called up shall be deemed to be assets of the company and to be a debt (in England and Ireland of the nature of a specialty (2)) due to the company from each member to the extent of any sums that may be unpaid on any shares held by him, and payable at such time as may be appointed by the court (3).

Court may have regard to wishes of creditors or contributories.

91. The court may, as to all matters relating to the winding-up, have regard to the wishes of the creditors or contributories, as proved to it by any sufficient evidence, and may, if it thinks it expedient, direct meetings of the creditors or contributories to be summoned, held and conducted in such manner as the court directs, for the purpose of ascertaining their wishes, and may appoint a person to act as chairman of any such meeting, and to report the result of such meeting to the court: in the case of creditors, regard is to be had to the value of the debts due to each creditor, and in the case of contributories to the number of votes conferred on each contributory by the regulations of the company (4).

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(1) It is not sufficient that the applicant is alleged to be a contributory; he must not dispute his liability. *Continental Bank*, 15 W. R. 548.

Staying proceedings does not prevent a claimant going on with proof of his debt. *Dover, Deal, &c. R. Co., e.p. Clifton*, 24 L. J., Ch. 83; 5 D. M. & G. 743.

(2) See *ante*, p. 144; sect. 38, p. 195; sects. 134, 175, *post*.

(3) See sect. 9, *ante*, p. 182, and sect. 134, *post*.

(4) See sect. 149, *post*; and, as to meetings under this section, General Order of November, 1862, rules 45—47.

Creditors' right to winding-up order.

Creditors have generally an absolute right to have an order for winding-up a company made as against the contributories. An order was made though the company had made a call and it was alleged that the company would meet its engagements when the call came in. *International Contract Co., e.p. Spatali*, 14 L. T. 926.

Creditors have a right to a winding-up order, though there may be no assets coming to them. *Isle of Wight Ferry Co.*, 2 H. & M. 597.

However, in one case where the petitioner was a shareholder as well as a creditor, V. C. Malins thought he had discretion under sects. 86, 91, and ordered the petition to stand over in order to

25 & 26 Vict. c. 89, s. 91.

allow the company to make arrangements for the payment of debts and carrying on their business. *Brighton Hotel Co.*, L. R., 6 Eq. 339.

Though the shareholders and some of the creditors applied to have an order for compulsory winding-up postponed, in order to allow a meeting to take place that the company might be wound up voluntarily, an order was made. *General Rolling Stock Co.*, 5 N. R. 354; 34 Beav. 314.

Where it was clear (the petitioner being a deferred creditor) that the assets would not satisfy the claims of the other creditors, who did not wish for a winding-up, the court refused to make a winding-up order. *London Permanent Building Society*, 17 W. R. 513.

The fact that a company is in process of voluntary liquidation is not to prejudice the right of creditors to have the company wound up compulsorily. Sect. 145, *post.*

A majority of creditors have a right to bind the minority as to whether a winding-up shall be under supervision or compulsorily. See sect. 149.

Individual contributories have not an absolute right to a winding-up order;

A contributory is not necessarily entitled to have the company wound up, though it may be unable to pay its debts within the letter of the act, unless the circumstances are a test of insolvency. *Wheal Lovell Mining Co., e.p. Wylde*, 1 M. & G. 1; 18 L. J., Ch. 139; *London Conveyance Co., e.p. Wise*, 1 Dr. 465.

Where there were judgment debts to a large amount on which the shareholders could be sued, but it seemed that the assets were sufficient, and arrangements had been made for payment of the judgment debts, a petition by a contributory was dismissed. *British Alkali Co., e.p. Guest*, 22 L. J., Ch. 241; 5 De G. & Sm. 458.

As to the effect of the existence of a voluntary winding-up, or the right of contributories to a compulsory order, see *post*, sect. 145.

their rights to interfere in the winding-up.

As to the right of shareholders to interfere in carrying out the winding-up, see *ante*, pp. 141, 142.

A suit sanctioned by the master under the Winding-up Acts of 1848, 1849, brought by one of the contributories in the name of himself and the others, was properly brought to recover trust funds belonging to the association. *Bryson* v. *Warwick, &c. Canal Co.*, 4 D. M. & G. 711.

Appearance and costs of creditors.

Under the Winding-up Acts of 1848, 1849, the proceedings were only for the benefit of the shareholders: the official manager did not represent the creditors. And by the Act of 1857 (20 & 21 Vict. c. 78), provision was made for the appointment of a creditors' representative. At first he was allowed to appear and have his costs on all occasions; but latterly he was usually only allowed the costs of appearing when there was a conflict of interest between the creditors and the contributories as a body. See *Mexican* v. *South American Mining Co.*, 26 Beav. 172; 27 L. J., Ch. 658; *Electric Telegraph Co. of Ireland, e.p. Budd*, 31 L. J., Ch. 4; 3 D. F. & J. 297; *Phœnix Life Assurance Co., e.p. Hatton*, 31 L. J., Ch. 341; *e.p. Hoare*, 31 L. J., Ch. 504; 2 J. & H. 229; *Re Saxon Life Assurance Society*, 2 J. & H. 408; *Phœnix Life Assurance Co., Burges's Case*, 31 L. J., Ch. 749; 2 J. & H. 441; *Re The Era Life Assurance Co.*, 1 De G. & Sm. 172; *The National Assurance and Investment Association, e.p. Cotterell*, 32 L. J., Ch. 66; *The British Provident Life and Fire Assurance Society, Orpen's Case*, 32 L. J., Ch. 632.

But the cases above have little application to the present law, as

Official Liquidators (1).

Appointment of official liquidator.

92. For the purpose of conducting the proceedings in winding-up a company, and assisting the court therein, there may be appointed a person or persons to be called an official liquidator or official liquidators; and the court having jurisdiction may appoint such person or persons, either provisionally or otherwise, as it thinks fit, to the office of official liquidator or official liquidators (2); in all cases if more persons than one are appointed to the office of official liquidator, the court shall declare whether any act hereby required or authorized to be done by the official liquidator is to be done by all or any one or more of such persons. The court may also determine whether any and what security is to be given by any official liquidator on

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the official liquidator represents the creditors equally with the contributories. And generally, it is thought, creditors will not be allowed to appear separately from the official liquidators.

On a petition to wind up a company in the Court of Stannaries, a creditor was not allowed to appear and oppose. *Re Tretoil and Messer Mining Co.*, 2 J. & H. 421.

(1) See General Order of November, 1862, rules 8—19, *post.*

Appointment at the hearing.

(2) The court will not, upon the hearing of a winding-up petition, appoint an official liquidator except by consent. *Commercial Discount Co.*, 11 W. R. 353; *Minerva Organ Co.*, 11 W. R. 530.

Appeals.

The Court of Appeal will not interfere with the discretion of the judge in appointing an official liquidator except on special grounds. *Railway Finance Co.* (3), 14 W. R. 956. The Court of Appeal would not interfere where a creditor had been appointed; *International Contract Co.*, L. R., 1 Ch. 522; nor where a director had been appointed. *London, Bombay and Mediterranean Bank*, L. R., 1 Ch. 524.

The judge is bound, if desired, to exercise his personal discretion and adjourn the matter into court, and not to require a summons to be taken out to discharge the chief clerk's order. *Agriculturists' Cattle Insurance Co., e.p. Lowe, e.p. Findlater*, 3 D. F. & J. 195; 30 L. J., Ch. 16, 619.

Proper persons to be official liquidators.

Where an order is made to wind up compulsorily a company in process of voluntary liquidation, the liquidator in the voluntary winding-up becomes the official liquidator. *London and Mediterranean Banking Co.*, 15 W. R. 33.

But it is thought the creditors will have a right at any rate to have a joint liquidator appointed with him.

See also sect. 152, *post*, p. 267.

In a winding-up in the Court of Bankruptcy, the court appointed an official assignee jointly with a person who had been chosen liquidator in the voluntary winding-up. *Llanfymach Silver Mining Co., e.p. Turner*, 9 W. R. 500.

L. J. Turner thought that neither a shareholder nor a creditor

25 & 26 Vict. c. 89, s. 92.

his appointment; if no official liquidator is appointed, or during any vacancy in such appointment, all the property of the company shall be deemed to be in the custody of the court (1).

Resignations, removals, filling up vacancies and compensation.

93. Any official liquidator may resign or be removed by the court on due cause shown; and any vacancy in the office of an official liquidator appointed by the court shall be filled by the court (2): there shall be paid to the official liquidator such salary or remuneration, by way of per-centage or otherwise, as the court may direct (3); and if more liquidators than one are appointed such remuneration shall be distributed amongst them in such proportions as the court directs.

Style and duties of official liquidator.

94. The official liquidator or liquidators shall be described by the style of the official liquidator or official liquidators of the particular company in respect of which he is or they are appointed, and not by his or their individual name or names; he or they shall take into his or their custody, or under his or their control, all the property, effects and things in action to which the company is or appears to be entitled, and shall perform such duties in reference to the winding-up of the company as may be imposed by the court (4).

Powers of official liquidator.

95. The official liquidator shall have power, with the sanction of the court (5), to do the following things:

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ought to be appointed, but a shareholder and creditor might be appointed jointly. *Northumberland and Durham District Banking Co.*, 2 De G. & J. 508.

(1) With regard to a winding-up in the Stannaries Court, 32 & 33 Vict. c. 19, s. 33, enacts:—

Duties of registrar in liquidation of a company.]—Where an order is made for the winding-up a company in the court, whether the same be a registered or an unregistered company, and no official liquidator is appointed, the registrar shall have authority, with the sanction of the vice-warden, to perform all the ordinary duties of an official liquidator, and to exercise all the powers assigned by the Companies Act, 1862, to such liquidator, so far as such duties or powers are not incompatible with his official duties as registrar.

(2) See *post*, General Orders of November, 1862, rule 16.

(3) As to the remuneration of liquidators, see the Regulation of May, 1868, *post*. Compare sect. 133, *post*, p. 257.

(4) See sect. 203, *post*, as to unregistered companies.

Effect of sanction.

(5) The fact that an official manager (under the Act of 1848) had the sanction of the court to prosecute a suit did not exempt him from liability to pay costs personally, the suit being improperly conducted. *Official Manager of the Grand Trunk R. Co.* v. *Brodie*, 3 D. M. & G. 146.

To bring or defend any action, suit or prosecution, or other legal proceeding, civil or criminal, in the name and on behalf of the company (1);

To carry on the business of the company, so far as may be necessary for the beneficial winding-up of the same (2);

To sell the real and personal and heritable and moveable property, effects and things in action of the company by public auction or private contract, with power to transfer the whole thereof to any person or company, or to sell the same in parcels (3);

Legal proceedings.

(1) The official liquidator can in his own name institute a suit on behalf of the company against the directors of the company for the purpose of compelling them to make good losses sustained through their misconduct in the management of the company. *Turquand* v. *Marshall*, L. R., 6 Eq. 112; 37 L. J., Ch. 582.

The official liquidator is a proper person to sue on behalf of the shareholders, both in those cases in which a shareholder has a right to sue, or in which he cannot do so without the consent of a majority (see *ante*, par. **37**, p. 137).

It was doubted whether a suit brought by one shareholder on behalf of all others, except the defendants, would be continued under sect. 53 of the Winding-up Act, 1848 (11 & 12 Vict. c. 45). *Official Manager of The Grand Trunk R. Co.* v. *Brodie*, 3 D. M. & G. 146.

The court refused to allow an official manager to adopt a suit; it was improper for him to take steps to put an end to it. *Caldwell* v. *Ernest*, 27 Beav. 29.

He was liable personally to pay costs occasioned by his doing so. *Caldwell* v. *Ernest*, 27 Beav. 42.

Where there is a question between two solvent persons as to which is a contributory, the official liquidator should appear by one counsel only. *Re Overend, Gurney & Co., Musgrave and Hart's Case*, L. R., 5 Eq. 193; 37 L. J., Ch. 161.

(2) An order to wind up a company is notice of discharge to the servants of a company. *General Rolling Stock Co., Chapman's Case*, L. R., 1 Eq. 346.

But where the business is carried on and the former servants are employed, the old contract between the company and its servants continues, and notice of discharge must be given pursuant thereto. *English Joint Stock Bank, e.p. Harding*, L. R., 3 Eq. 341.

(3) Under the Winding-up Act of 1848, by which the property of a company in process of liquidation was vested in the official manager, a purchaser was compelled to take a conveyance of an equitable interest, under a condition that the purchaser should accept a conveyance of the entire property from the official manager without requiring the concurrence of any of the shareholders or of any other person. *Sheerness Well Company* v. *Polson*, 30 L. J., Ch. 326; 3 D. F. & J. 36.

Semble, on a sale in chambers by the official liquidator under the

25 & 26 Vict. c. 89, s. 95.

To do all acts and to execute, in the name and on behalf of the company, all deeds, receipts and other documents, and for that purpose to use, when necessary, the company's seal;

To prove, rank, claim and draw a dividend, in the matter of the bankruptcy or insolvency or sequestration of any contributory, for any balance against the estate of such contributory, and to take and receive dividends in respect of such balance, in the matter of bankruptcy or insolvency or sequestration, as a separate debt due from such bankrupt or insolvent, and rateably with the other separate creditors;

To draw, accept, make and indorse any bill of exchange or promissory note in the name and on behalf of the company (1), also to raise upon the security of the assets of the company from time to time any requisite sum or sums of money; and the drawing, accepting, making or indorsing of every such bill of exchange or promissory note as aforesaid on behalf of the company shall have the same effect with respect to the liability of such company as if such bill or note had been drawn, accepted, made or indorsed by or on behalf of such company in the course of carrying on the business thereof;

To take out, if necessary, in his official name, letters of

Act of 1856, there was no such thing as opening the biddings. *Re Northumberland and Durham, &c. Banking Co.*, 9 W. R. 584.

A bank had stopped payment on account of a panic, and was being wound up under the supervision of the court: a scheme was sanctioned under which a new company took over the assets and liabilities of the old company. *Agra and Masterman's Bank, e.p. Pollock*, 15 W. R. 554.

(1) A company had contracted for goods to be paid for by acceptances. The contract was not completed by reason of the winding-up of the company. The court allowed the makers of the goods to prove for damages for non-fulfilment of the contract, and did not compel them to deliver the goods and take acceptances. *Contract Corporation, e.p. Ebbw Vale Co.*, L. R., 8 Eq. 14.

The acceptor of a bill of exchange has no equity to prevent the official liquidator from negotiating the bill and have it set off against a debt due to him from the company. *Commercial Banking Corporation of India and the East, Smith, Flemming & Co.'s Case*, 36 L. J., Ch. 333; L. R., 1 Ch. 538.

administration to any deceased contributory, and to do in his official name any other act that may be necessary for obtaining payment of any monies due from a contributory or from his estate, and which act cannot be conveniently done in the name of the company; and in all cases where he takes out letters of administration, or otherwise uses his official name for obtaining payment of any monies due from a contributory, such monies shall, for the purpose of enabling him to take out such letters or recover such monies, be deemed to be due to the official liquidator himself;

To do and execute all such other things as may be necessary for winding-up the affairs of the company and distributing its assets.

Discretion of official liquidator.

96. The court may provide by any order that the official liquidator may exercise any of the above powers without the sanction or intervention of the court (1), and where an official liquidator is provisionally appointed may limit and restrict his powers by the order appointing him.

Appointment of solicitor to official liquidator.

97. The official liquidator may, with the sanction of the court, appoint a solicitor or law agent to assist him in the performance of his duties.

Ordinary Powers of Court (2).

Collection and application of assets.

98. As soon as may be after making an order for winding-up

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(1) A suit for the administration of the estate of a deceased shareholder, in order to enforce calls, was properly brought on a general authority without special order. The authority need not appear on the pleadings. *Turquand* v. *Kirby*, L. R., 4 Eq. 123; 36 L. J., Ch. 570.

A general sanction allows an official liquidator to compromise. *South Eastern of Portugal R. Co.*, 17 W. R. 760.

In that case the order was discharged on appeal, as there was not evidence to support such an order before the court. L. J. Giffard said, "Whether the order was made under sect. 96 or sect. 160, there must be such evidence before the court as would enable it to exercise a judicial discretion in the matter." 17 W. R. 809.

Jurisdiction.

(2) A resolution had been passed to wind up a company voluntarily, and the company had confirmed an agreement to amalgamate with another company. A petition was presented to wind up the first company compulsorily. The court could not, without the presence

25 & 26 Vict. c. 89, s. 98.

the company, the court shall settle a list of contributories (1), with power to rectify the register of members in all cases where

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of the other company, set aside the agreement to amalgamate, and therefore a bill was necessary. *Re Imperial Bank of China, India and Japan*, L. R., 2 Ch. 339; 35 L. J., Ch. 445.

All matters simply between the shareholders and the company, relative to the property of the company, are to be settled in the winding-up; therefore a bill would not lie to make shareholders account for shares in another company which had been distributed among them. *Cardiff Preserved Coal, &c. Co.* v. *Norton*, L. R., 2 Eq. 558; 2 Ch. 405; 35 L. J., Ch. 646; 36 L. J., Ch. 451.

Costs can be given out of the estate only in the winding-up, so that where an official manager moved in a different branch of the court from that in which the company was being wound up, it was wrong to insert in an order that he ought not to have his costs out of the estate. *Jones* v. *Jones*, 2 De G. & Sm. 295; 34 L. J., Ch. 11.

List of contributories.

(1) It was held under the Winding-up Acts, 1848, 1849, where persons had been induced by misrepresentation to execute a subscription contract, under which they became liable to contribute to the expenses of an abortive company, it was not necessary for the deceived persons to file a bill, but they were struck off the list of contributories. *The Dover, Hastings, &c. R. Co., e.p. Carew* (2), 7 D. M. & G. 43; 24 L. J., Ch. 769. It is thought that, notwithstanding the decision of *Oakes* v. *Turquand*, *ante*, p. 66, this case is still good law, as the association wound up was not a registered company.

That a winding-up order ought not to have been made is no reason why a person's name should not be put or kept on the list of contributories. *Universal Salvage Co., e.p. Sharpe*, 3 De G. & Sm. 49; *Overend, Gurney & Co., e.p. Oakes and Peek* (2), 36 L. J., Ch. 413.

The prospectus of a cost-book mining company stated the capital at 30,000*l*. A subscriber could not have his name removed from the list of contributories, on the ground that only a portion of the capital had been subscribed for. *Great Cambrian Mining Co., e.p. Hawkins*, 2 K. & J. 253; 25 L. J., Ch. 221.

Costs.

It is now settled that where a person successfully resists being placed on the list of contributories, he is to have his costs paid him. *Birkbeck Life Assurance Co., e.p. Barry's Executors*, 5 N. R. 299; 2 Dr. & Sm. 321. And if he is unsuccessful, he will have to pay the costs. *Barned's Banking Co., Andrew's Case*, 37 L. J., Ch. 87; L. R., 3 Ch. 161; *London and Provincial Starch Co., e.p. Gower*, L. R., 6 Eq. 77. Where, however, a person so resisting is one of a number of others whose circumstances are similar, and whose cases will be governed by the case brought into court, it is usual to pay the costs out of the estate, whatever the event is. But the costs of an unsuccessful appeal will not be allowed in such case. *Joint Stock Discount Co., e.p. Sichell*, L. R., 3 Ch. 119; 37 L. J., Ch. 373. See also in the same company, *Shepherd's Case*, L. R., 2 Ch. 16; 36 L. J., Ch. 32.

Where two applicants were heard together, an order that they should jointly pay costs was wrong. *Overend, Gurney & Co., Oakes and Peek's Cases*, L. R., 2 E. & Ir. 325; 36 L. J., Ch. 949.

such rectification is required in pursuance of this act (1), and shall cause the assets of the company to be collected (2) and applied in discharge of its liabilities (3).

Provision as to representative contributories.

99. In settling the list of contributories the court shall distinguish between persons who are contributories in their own right and persons who are contributories as being representatives of or being liable to the debts of others; it shall not be necessary, where the personal representative of any deceased contributory is placed on the list, to add the heirs or devisees of such contributory, nevertheless such heirs or devisees may be added as and when the court thinks fit (4).

Power of court to require delivery of property (5)

100. The court may, at any time after making an order for winding-up a company, require any contributory for the time being settled on the list of contributories, trustee, receiver, banker or agent, or officer of the company, to pay, deliver, convey, surrender or transfer forthwith, or within such time as the court directs, to or into the hands of the official liquidator, any sum or balance, books, papers, estate or effects which happen to be in his hands for the time being, and to which the company is *primâ facie* entitled (6).

Practice.

As to the practice in settling lists of contributories, see General Order of November, 1862, rules 29—31.

(1) L. J. Cairns said, "In my opinion the reference in sect. 98 to a rectification of the register cannot mean that the court in winding-up a company is to rectify the register *ex mero motu suo;* it must mean that the court may exercise the judicial power conferred by the 35th section, having regard to who the applicant is and to all the circumstances of the case." *Joint Stock Discount Co., Sichell's Case*, L. R., 3 Ch. 122; 37 L. J., Ch. 373.

(2) As to dealing with the assets of the company, see *post*, General Order of November, 1862, rules 36—44.

(3) As to the proof of debts, see *post*, sect. 158, and General Orders of November, 1862, rules 20—28.

(4) In settling the list, it is improper to put a person on in an alternative character. *St. George's Steam Packet Co., e.p. Pim*, 1 M. & G. 291.

The court refused to put a person's name on the list of contributories in a different character from that of which notice had been given to him. *St. George's Steam Packet Co., e.p. Glaholme*, 1 De G. & Sm. 583.

(5) For form of order under these sections, see *post*, third Schedule to General Order of November, 1862, No. 13.

(6) It was attempted to apply this section to make a judgment creditor, who had obtained payment of a debt due to a company

25 & 26 Vict. c. 89, s. 101.

Power of court to order payment of debts by contributory.

101. The court may, at any time after making an order for winding-up the company, make an order on any contributory for the time being settled on the list of contributories (1), directing payment to be made, in manner in the said order mentioned, of any monies due from him or from the estate of the person whom he represents to the company, exclusive of any monies which he or the estate of the person whom he represents may be liable to contribute by virtue of any call made or to be made by the court in pursuance of this part of this act; and it may, in making such order, when the company is not limited, allow to such contributory by way of set-off any monies due to him or the estate which he represents from the company on any independent dealing or contract with the company, but not any monies due to him as a member of the company in respect of any dividend or profit (2):

Provided that when all the creditors of any company whether

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under a garnishee order, repay the money, but it was held that, if he was not entitled to the money he was not a trustee within the meaning of this section. *United English and Scottish Life Assurance Co., e.p. Hawkins*, 37 L. J., Ch. 632; L. R., 3 Ch. 787.

Under the Act of 1848 (11 & 12 Vict. c. 45), s. 66, it was held, that where a sum exceeding the amount of his bill of costs had been paid, he was not trustee of the balance so as to be ordered to pay under that section. *Direct London and Exeter R. Co., Hollingsworth's Case*, 3 De G. & Sm. 102.

The court refused on an *ex parte* application to order that the late manager of a company should deliver up dock warrants to the official liquidator. *Commercial Union Wine Co.*, 35 Beav. 35.

(1) The court cannot put a paid-up shareholder on the list of contributories for the purpose of obtaining payment of a debt under this section. *Re Marlborough Club Co.*, L. R., 5 Eq. 256.

Set-off.

(2) This section does not apply to a voluntary winding-up, and therefore a plea of set-off to an action for calls by a liquidator in a voluntary winding-up is good. *Brighton Arcade Co.* v. *Dowling*, 37 L. J., C. P. 125; L. R., 3 C. P. 175; *Garnett and Moseley Mining Co.* v. *Sutton*, 1 N. R. 93; 32 L. J., Q. B. 47.

It has been held that a contributory, on whose petition a winding-up order has been made, is entitled to have the costs without having calls set off against them. *General Exchange Bank*, L. R., 4 Eq. 138.

A member is entitled to dividends on debts due to him, not in his capacity of a member, equally with other creditors. He may not set off his credit against his calls; he may set off the dividends on such credit. *Re Overend, Gurney & Co., Grissell's Case*, L. R., 1 Ch. 528; 35 L. J., Ch. 752.

A member may not set off his credit against a call, though the call was made before the winding-up commenced. *Breech-*

limited or unlimited are paid in full, any monies due on any account whatever to any contributory from the company may be allowed to him by way of set-off against any subsequent call or calls (1).

Power of court to make calls.

102. The court may, at any time after making an order for winding-up a company, and either before or after it has ascertained the sufficiency of the assets of the company, make calls on and order payment thereof by all or any of the contributories for the time being settled on the list of contributories, to the extent of their liability, for payment of all or any sums it deems necessary to satisfy the debts and liabilities of the company, and the costs, charges and expenses of winding it up, and for the adjustment of the rights of the contributories amongst themselves, and it may, in making a call, take into consideration the probability that some of the contributories upon whom the same is made may partly or wholly fail to pay their respective portions of the same (2).

Loading Armoury Co., e.p. Calisher, 37 L. J., Ch. 208; L. R., 5 Eq. 214.

The trustees of an inspectorship deed executed by a shareholder, are entitled under this section to set off a debt due to the shareholder. *Re Duckworth*, L. R., 2 Ch. 578; 36 L. J., B. 28.

(1) See sect. 58, *ante*, p. 195.

The latter part of this section is extended to the case of directors whose liability is unlimited. C. A. 1867, sect. 6, *post*.

Discretion of court and reasons for making calls.

(2) The court may make a call to provide for the payment of debts not yet established; and the Court of Appeal will not generally interfere with the discretion of the judge to whose branch of the court the winding-up is attached. *Contract Corporation, e.p. Boyer*, L. R., 2 Ch. 95; 36 L. J., Ch. 69; *Barned's Banking Co.*, 36 L. J., Ch. 215.

Semble, the Court of Appeal will not interfere with a properly made call, because the amount has been over-estimated. *Sea, Fire and Life Assurance Co., e.p. Greenwood*, 3 D. M. & G. 459; 23 L. J., Ch. 966.

The court refused to make a call to pay a debt more than five years after it had been proved, the other debts having been settled by compromise. *Dover, Hastings, &c. R. Co., e.p. A'Beckett*, 2 Jur., N. S. 684.

A call will not be made on an informal list of contributories. *Eastern Counties Junction, &c. R. Co., Underwood's Case*, 5 D. M. & G. 577.

The validity of a winding-up order will not be gone into on a

25 & 26 Vict. c. 89, s. 103.

Power of court to order payment into bank.

103. The court may order any contributory, purchaser or other person from whom money is due to the company to pay the same into the bank of England or any branch thereof to the account of the official liquidator instead of to the official liquidator, and such order may be enforced in the same manner as if it had directed payment to the official liquidator.

Regulation of account with court.

104. All monies, bills, notes and other securities paid and delivered into the bank of England or any branch thereof, in the event of a company being wound up by the court, shall be subject to such order and regulation for the keeping of the account of such monies and other effects, and for the payment and delivery in, or investment and payment and delivery out, of the same as the court may direct (1).

Provision in case of representative contributory not paying monies ordered.

105. If any person made a contributory as personal representative of a deceased contributory makes default in paying any sum ordered to be paid by him, proceedings may be taken for administering the personal and real estates of such deceased contributory, or either of such estates, and of compelling payment thereout of the monies due (2).

Order conclusive evidence.

106. Any order made by the court in pursuance of this act upon any contributory shall, subject to the provisions herein contained for appealing (3) against such order, be conclusive evidence that the monies, if any, thereby appearing to be due or ordered to be paid are due, and all other pertinent matters stated in such order are to be taken to be truly stated as against all persons, and in all proceedings whatsoever, with the exception of proceedings taken against the real estate of any deceased contributory, in which case such order shall only be *primâ facie* evidence for the purpose of charging his real estate, unless his heirs or devisees were on the list of contributories at the time of the order being made.

Court may exclude creditors not proving

107. The court may fix a certain day or certain days on or within which creditors of the company are to prove their debts

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summons for making a call. *London Marine Insurance Association*, L. R., 8 Eq. 176.

See further, as to the mode of making and enforcing calls, *post*, General Orders of Nov. 1862, rules 33—35, and sect. 120, p. 249.

(1) See *post*, General Order of Nov. 1862, rules 11, 32, 37—41.

(2) See sect. 95, *ante*, p. 235.

(3) See sect. 124, *post*, p. 251.

or claims, or to be excluded from the benefit of any distribution made before such debts are proved (1). in certain time.

108. If in the course of proving the debts and claims of creditors in the court of the vice-warden of the stannaries any debt or claim is disputed by the official liquidator or by any creditor or contributory, or appears to the court to be open to question, the court shall have power, subject to appeal as hereinafter provided, to adjudicate upon it, and for that purpose the said court shall have and exercise all needful powers of inquiry touching the same by affidavit or by oral examination of witnesses or of parties, whether voluntarily offering themselves for examination or summoned to attend by compulsory process of the court, or to produce documents before the court; and the court shall also have power, incidentally, to decide on the validity and extent of any lien or charge claimed by any creditor on any property of the company in respect of such debt, and to make declarations of right, binding on all persons interested; and for the more satisfactory determination of any question of fact, or mixed question of law and fact arising on such inquiry, the vice-warden shall have power, if he thinks fit, to direct and settle any action or issue to be tried either on the common law side of his court, or by a common or special jury, before the justices of assize in and for the counties of Cornwall or Devon, or at any sitting of one of the superior courts in London or Middlesex, which action or issue shall accordingly be tried in due course of law, and without other or further consent of parties; and the finding of the jury in such action or issue shall be conclusive of the facts found, unless the judge who tried it makes known to the vice-warden that he was not satisfied with the finding, or unless it appears to the vice-warden that, in consequence of miscarriage, accident or the subsequent discovery of fresh material evidence, such finding ought not to be conclusive. Proceedings in the court of the vice-warden of the stannaries on proof of debts.

109. The court shall adjust the rights of the contributories amongst themselves, and distribute any surplus that may remain amongst the parties entitled thereto (2). Court to adjust rights of contributories.

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(1) See General Order of November, 1862, rules 20—28, as to proof of debts, *post.*

(2) One class of shareholders brought in all the capital, the rest of

25 & 26 Vict. c. 89, s. 110.

Court to order costs.

110. The court may, in the event of the assets being insufficient to satisfy the liabilities, make an order as to the payment out of the estate of the company of the costs, charges and expenses incurred in winding-up any company in such order of priority as the court thinks just (1).

Dissolution of company.

111. When the affairs of the company have been completely wound up, the court shall make an order that the company be dissolved from the date of such order, and the company shall be dissolved accordingly.

Registrar to make minute of dissolution (2).

112. Any order so made shall be reported by the official liquidator to the registrar, who shall make a minute accordingly in his books of the dissolution of such company.

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the shares were paid-up shares issued as payment for a patent and premises. The first class were to receive a dividend of 7*l.* 10*s.* yearly before the others were to receive anything. On the winding-up of the company the assets were divided equally. *London India Rubber Co.*, L. R., 5 Eq. 519.

Where some shares had 25*l.* paid-up and others 12*l.* 10*s.*, and the profits had been divided rateably, the assets were also distributed rateably. *Somes* v. *Currie*, 1 K. & J. 605.

Paid-up shares had been given as the price of a mine; the contract had been stated in the articles of association. On the construction of those articles it was held, that the shareholder was not entitled to have a call made for contribution. *Holyford Mining Co., e.p. Smyth*, I. R., 3 Eq. 208.

Priorities of costs.

(1) All the costs of winding-up are to be paid in priority to the debts of the company being wound up. The costs of the petitioner are to be paid in priority to the other costs, which are to be paid *pari passu*. *Marlborough Club Co., e.p. Percival*, L. R., 6 Eq. 519.

Costs of a person bringing an action successfully against a company, with leave of the court, are to be paid in full. *Trent and Humber Ship Building Co., e.p. Bailey*, L. R., 8 Eq. 94; 38 L. J., Ch. 485; 17 W. R. 1079.

A person defending an action brought by the company in the winding-up is entitled, if successful, to be paid his costs in full. *Bank of Hindustani, China and Japan, Smith's Case*, 37 L. J., Ch. 185; L. R., 3 Ch. 125.

Where a claim against a company is adjourned into court and allowed with costs out of the estate, only costs of the adjournment into court are meant to be given. *General Estates Co., e.p. Wright and Gamble*, L. R., 8 Eq. 123.

The costs of a person who had successfully resisted being placed on the list of contributories were allowed him. *North of England Banking Co., e.p. Hall*, 1 D. M. & G. 1.

Compare sect. 144 as to costs of a voluntary winding-up, *post*, p. 262.

Production of documents.

(2) The N. company had assigned their business to the O. company, and handed over their books. Both companies were wound

Penalty on not reporting dissolution of company.

113. If the official liquidator makes default in reporting to the registrar, in the case of a company being wound up by the court, the order that the company be dissolved, he shall be liable to a penalty not exceeding five pounds for every day during which he is so in default.

Petition to be *lis pendens*.

114. Any petition for winding-up a company by the court under this act shall constitute a *lis pendens* within the terms of the act passed in the session holden in the second and third years of the reign of her present Majesty, chapter eleven, and intituled "An Act for the better Protection of Purchasers against Judgments, Crown Debts, *Lis pendens* and Fiats in Bankruptcy," provided the same is duly registered in manner required by such act concerning suits in equity (1).

Extraordinary Powers of Court.

Power of court to summon persons before it suspected of

115. The court may, after it has made an order for winding-up the company, summon (2) before it any officer of the company or person known or suspected to have in his possession

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up. The liquidator of the N. company was not entitled to the possession of the documents, but it was ordered that the books should be produced at all reasonable times at the chambers of the vice-chancellor, in whose branch of the court the O. company was being wound up. *National Financial Co.*, 15 W. R. 499.

(1) It is difficult to see what effect this section could have. It has now been repealed, C. A. 1867, sect. 1.

Mode of summoning.

(2) For form of summons under this section, see General Order of November, 1862, form 54, *post.* Where a special examiner has been appointed, the proper mode of summoning is not by subpœna, but by summons in chambers. *English Joint Stock Bank*, L. R., 3 Eq. 203.

Notice.

A contributory refused to be examined, on the ground that he had not had forty-eight hours' notice. The refusal was not justified. *North Wheal Exmouth Mining Co.*, 15 W. R. 58.

Special examiner.

A special examiner cannot be appointed to act in all cases in a winding-up, as the persons examined have a right to object to the examiner; therefore an alleged contributory could not be compelled to attend and be examined before an examiner appointed generally in the winding-up. *Smith, Knight & Co., e.p. Hakin*, 17 W. R. 758; L. R., 8 Eq. 23.

Summons taken out by contributory.

A contributory has a right to obtain a summons for the purpose of settling any question between himself and other contributories as such. *Overend, Gurney & Co., e.p. Musgrave*, 16 L. T., N. S. 378.

The official liquidator was summoned at the instance of an alleged contributory in proceedings disputing his liability. *Barned's Banking Co., e.p. Contract Corporation*, L. R., 2 Ch. 350.

25 & 26 Vict. c. 89, s. 115.

having property of company.

any of the estate or effects of the company, or supposed to be indebted to the company, or any person whom the court may deem capable of giving information concerning the trade, dealings, estate or effects of the company (1); and the court may require any such officer or person to produce any books, papers, deeds, writings or other documents in his custody or power relating to the company; and if any person so summoned, after being tendered a reasonable sum for his expenses (2), refuses to come before the court at the time appointed, having no lawful impediment (made known to the court at the time of its sitting and allowed by it), the court may cause such person to be apprehended, and brought before the court for examination; nevertheless, in cases where any person claims any lien on papers, deeds or writings or documents produced by him, such production shall be without prejudice to such lien, and the court shall have jurisdiction in the winding-up to determine all questions relating to such lien (3).

What persons may be summoned.

(1) A managing clerk of a bank, in which a contributory had an account, was held capable of giving information as to the estate of the company; for information as to the property of members was information concerning the estate of the company. *Financial Insurance Co.*, 36 L. J., Ch. 687.

A broker who had lodged the transfer of shares to have them registered in the name of an infant, was summoned. *Imperial Mercantile Credit Co.*, 37 L. J., Ch. 295.

A creditor is not within the scope of this section. *Accidental Marine Insurance Co.*, L. R., 5 Eq. 22.

A person was summoned for the purpose of determining whether he ought to be on the list of contributories though the list had been settled. *Esgair Mwyn Mining Co.*, 8 W. R. 660.

Shares in a company, which was afterwards wound up, were transferred from C. to N. without consideration, G. being the active party in the transaction. Subsequent calls had been paid with money supplied by G. The liquidators, considering it material to have these monies, applied for a summons calling upon the secretary of the banking company, with whom G. kept his account, to attend for examination and produce all books containing entries as to G.'s affairs. It was held, that the summons might issue, it being left open to the witness, upon his attending the summons, to take any objection he might have to the inspection of the books. *Re Smith, Knight & Co.*, L. R., 4 Ch. 421.

(2) A person need not attend unless his expenses are tendered to him. *Northern and Southern Connecting R. Co., Mercer's Case*, 5 D. M. & G. 26.

Solicitor's lien.

(3) Solicitors claiming a lien were ordered to produce documents, not to deliver them up. *South Essex Reclamation Co., e. p. Paine*, 17 W. R. 275.

Special provisions as to court of vice-warden of the stannaries.

116. If, after an order for winding-up in the court of the vice-warden of the stannaries, it appears that any person claims property in, or any lien, legal or equitable, upon any of the machinery, materials, ores or effects on the mine or on premises occupied by the company in connexion with the mine, or to which the company was, at the time of the order, *primâ facie* entitled, it shall be lawful for the vice-warden or the registrar to adjudicate upon such claim on interpleader in the manner provided by section eleven of the act passed in the eighteenth year of the reign of her present Majesty, chapter thirty-two(1);

Under the older winding-up acts, solicitors were not ordered even to produce the documents over which they had a lien. *Oxford, Worcester, &c. R. Co., Potter's Case*, 18 L. J., Ch. 247; 1 De G. & Sm. 728.

In *Dover, Hastings, &c. R. Co., e.p. A'Beckett*, 2 Jur., N. S. 684, solicitors were ordered to deliver up documents on terms that the sum due to them should be paid out of the first monies belonging to the contributories coming into the hands of the official manager.

For course pursued when the official manager had, with the sanction of the master, undertaken to pay the solicitor's bill out of the first funds that should come into his hands, see *Gloucester, Aberystwith, &c. R. Co.*, 2 Giff. 47; 29 L. J., Ch. 383.

Solicitors have no lien on the file of proceedings in the winding-up. See *post*, General Orders of November, 1862, rule 58.

Interpleader in equity.

(1) 18 & 19 Vict. c. 32, s. 11, enacts that when any claim is made to or in respect of any goods and chattels, or the proceeds or value thereof, sold or intended to be sold under a customary decree of sale in a mining creditors' suit by any landlord for rent or other distrainable demand, or by any other person not being a party to the suit, it shall be lawful for the vice-warden to call upon the claimant, by rule or order of the court, to appear in person or by his attorney or agent in support of the same, either before the vice-warden himself or before the registrar, and to state the nature and particulars of his claim, who shall thereupon hear the allegations and receive the proofs offered, as well by the claimant as by the plaintiff in the suit, and if the claimant and plaintiff shall agree on the facts of the case, shall then adjudicate upon the claim, and if the said parties shall not so agree, then the disputed facts shall be ascertained by an action or issue to be tried in the vice-warden's court, in such form as the vice-warden shall direct, and the vice-warden shall then adjudicate upon the claim, and the vice-warden or registrar shall have power, with the consent of the parties so before him, their counsel, attornies or agents, to adjudicate upon and dispose of the claim in a summary manner: provided that, in all cases except in case of summary adjudication by consent, it shall be competent for the registrar, at the request of the said parties or either of them, to refer the decision of the case to the vice-warden, and the vice-warden shall in all cases of such interpleader make such other rules and orders in the matter of the said claim or adjudication as between the said parties in respect thereof, or of the costs of the proceedings, as to him shall seem fit and reasonable.

25 & 26 Vict. c. 89, s. 116.

and any action or issue directed upon such interpleader may, if the vice-warden think fit, be tried in this court or at the assizes or the sittings in London or Middlesex, before a judge of one of the superior courts, in the manner and on the terms and conditions hereinbefore provided in the case of disputed debts and claims of creditors.

Examination of parties by court.

117. The court may examine upon oath, either by word of mouth or upon written interrogatories, any person appearing or brought before them in manner aforesaid concerning the affairs, dealings, estate or effects of the company, and may reduce into writing the answers of every such person, and require him to subscribe the same (1).

Power to arrest contributory about to abscond, or to remove or conceal any of his property.

118. The court may, at any time before or after it has made an order for winding-up a company, upon proof being given that there is probable cause for believing that any contributory to such company is about to quit the united kingdom, or otherwise abscond, or to remove or conceal any of his goods or chattels, for the purpose of evading payment of calls, or for avoiding examination in respect of the affairs of the company, cause such contributory to be arrested, and his books, papers, monies, securities for monies, goods and chattels to be seized,

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Counsel.

(1) A witness summoned under sect. 115, to give evidence under this section, is entitled to have his counsel and solicitor present; he may be re-examined. *Breech-Loading Armoury Co., Calisher's Case*, 37 L. J., Ch. 208; L. R., 5 Eq. 214; *Merchants' Company, Chapman's Case*, L. R., 4 Eq. 453.

Amount of discovery required.

A witness must answer questions as to hearsay. *Ottoman Co.*, 15 W. R. 1069.

B. brought actions against a company in respect of disputed accounts; he succeeded in one of the actions. A winding-up order was then made; he was summoned as a witness before a special examiner; he refused to answer questions as to whether he was a director and as to certain transactions between him and the company; he then moved that his examination might be stayed on the ground that it might prejudice his actions. It was held, that the examination could not be stayed; any questions were to be dealt with separately. *Contract Corporation, e.p. Bateman*, 15 W. R. 118; on appeal, 15 L. T. 495.

The official liquidator is in the same position with respect to giving discovery in proceedings by an alleged contributory in a winding-up as a defendant to a suit. *Barned's Banking Co., e.p. Contract Corporation*, L. R., 2 Ch. 580.

Under the Winding-up Acts, 1848 and 1849, the same rule was acted on. *German Mining Co., e.p. Stone*, 3 De G. & Sm. 120.

and him and them to be safely kept until such time as the court may order (1).

Powers of court cumulative.

119. Any powers by this act conferred on the court shall be deemed to be in addition to and not in restriction of any other powers subsisting, either at law or in equity, of instituting proceedings against any contributory or the estate of any contributory, or against any debtor of the company for the recovery of any call or other sums due from such contributory or debtor or his estate, and such proceedings may be instituted accordingly.

Enforcement of and Appeal from Orders.

Power to enforce orders.

120. All orders made by the Court of Chancery in England or Ireland under this act may be enforced in the same manner in which orders of such Court of Chancery made in any suit pending therein may be enforced (2), and for the purposes of this part of this act the court of the vice-warden of the stannaries shall, in addition to its ordinary powers, have the same power of enforcing any orders made by it as the Court of Chancery in England has in relation to matters within the jurisdiction of such court, and for the last-mentioned purposes the jurisdiction of the vice-warden of the stannaries shall be deemed to be co-extensive in local limits with the jurisdiction of the Court of Chancery in England.

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(1) On evidence that a contributory was about to sell his goods and leave the country for the purpose of evading payment of a call, the court made an order under this section to seize his goods, but, the evidence being only hearsay as to his intention to leave the country, refused to order his arrest. *Imperial Mercantile Credit Co.*, L. R., 5 Eq. 264.

Process to enforce calls.

(2) A writ of elegit was sued out under 27 & 28 Vict. c. 112, and lands of a contributory who had failed to pay calls were delivered in execution on petition by the official liquidator for sale of the lands and payment of the calls out of the proceeds. The Master of the Rolls directed an inquiry as to what interest the debtor had in the lands taken in execution at the time of the levy, and whether any other and what parties were interested therein. *Re Kirby*, 14 L. T., N. S. 65.

Where the official liquidator desires to issue a writ of *fi. fa.*, he must obtain an order for payment to himself, under the General Orders of November, 1862, rule 38. *Leeds Banking Co.*, L. R., 1 Ch. 150; 35 L. J., Ch. 311.

The court will grant a writ of sequestration against the estate of a contributory who has left the country without first issuing an attachment. *East of England Banking Co.*, 11 L. T., N. S. 411.

25 & 26 Vict. c. 89, s. 121.

Power to order contributories in Scotland to pay calls.

121. Where an order, interlocutor or decree has been made in Scotland for winding-up a company by the court, it shall be competent to the court in Scotland during session, and to the Lord Ordinary on the bills during vacation, on production by the liquidators of a list certified by them of the names of the contributories liable in payment of any calls which they may wish to enforce, and of the amount due by each contributory respectively, and of the date when the same became due, to pronounce forthwith a decree against such contributories for payment of the sums so certified to be due by each of them respectively, with interest from the said date till payment, at the rate of five pounds per centum per annum, in the same way and to the same effect as if they had severally consented to registration for execution, on a charge of six days, of a legal obligation to pay such calls and interest; and such decree may be extracted immediately, and no suspension thereof shall be competent except on caution or consignation, unless with special leave of the court or Lord Ordinary.

Order made in England to be enforced in Ireland and Scotland.

122. Any order made by the court in England for or in the course of the winding-up of a company under this act shall be enforced in Scotland and Ireland in the courts that would respectively have had jurisdiction in respect of such company if the registered office of the company had been situate in Scotland or Ireland, and in the same manner in all respects as if such order had been made by the courts that are hereby required to enforce the same; and in like manner orders, interlocutors and decrees made by the court in Scotland for or in the course of the winding-up of a company shall be enforced in England and Ireland, and orders made by the court in Ireland for or in the course of winding-up a company shall be enforced in England and Scotland by the courts which would respectively have had jurisdiction in the matter of such company if the registered office of the company were situate in the division of the united kingdom where the order is required to be enforced, and in the same manner in all respects as if such order had been made by the court required to enforce the same in the case of a company within its own jurisdiction.

Mode of dealing with orders to be enforced by other courts.

123. Where any order, interlocutor or decree made by one court is required to be enforced by another court, as hereinbefore provided, an office copy of the order, interlocutor or

decree so made shall be produced to the proper officer of the court required to enforce the same, and the production of such office copy shall be sufficient evidence of such order, interlocutor or decree having been made, and thereupon such last-mentioned court shall take such steps in the matter as may be requisite for enforcing such order, interlocutor or decree, in the same manner as if it were the order, interlocutor or decree of the court enforcing the same.

Appeals from orders (1).

124. Rehearings of and appeals from any order or decision made or given in the matter of the winding-up of a company by any court having jurisdiction under this act, may be had in the same manner and subject to the same conditions in and subject to which appeals may be had from any order or decision of the same court in cases within its ordinary jurisdiction (2); subject to this restriction, that no such rehearing or appeal shall be heard unless notice of the same is given within three weeks after any order complained of has been made (3) in

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Reasons for re-hearing.

(1) Where important documents, the absence of which was much relied on in the judgment at the hearing, were discovered afterwards, the court granted a re-hearing on terms as to costs. *Re Wiltshire Iron Co., e.p. Pearson*, 37 L. J., Ch. 554; 16 W. R. 444. L. C. Cairns said, "He should be sorry to introduce any laxity into the practice of winding-up proceedings greater than already existed; at the same time it must be remembered that the issue was not so distinctly defined as in a suit."

A re-hearing before the master was allowed on motion, the applicant not having appeared to contest the matter before, on affidavits giving reasons for not having done so. *Liverpool and Manchester Saw Mills Co., e.p. Ashburner*, 13 Jur. 391.

Proceedings before the chief clerk.

Every one has a right to be heard by the judge himself. The hearing by the judge is only a continuation of the hearing by his chief clerk; therefore where a person was in contempt, but had been heard by the master by counsel, he had a right, notwithstanding the contempt, to be heard by the judge. *Madrid and Valentia R. Co., e.p. Chadwick*, 15 Jur. 597.

Appeals from county court.

(2) An appeal from the county court in winding-up under the Industrial and Provident Societies Act, 1862 (24 & 25 Vict. c. 87), is to the Court of Chancery. *Henderson* v. *Bramber*, 35 L. J., C. P. 65.

To what proceedings restriction is applicable.

(3) The restriction as to three weeks does not apply to orders made on petition for winding-up a company. *Re Universal Bank*, L. R., 1 Ch. 128; *Anglo-Californian Gold Mining Co.*, 1 De G. & Sm. 628; 29 L. J., Ch. 55; *Plumstead Water Works Co.*, 2 D. F. & J. 20; 28 Beav. 545.

It does not prevent the courts varying the list of contributo-

25 & 26 Vict. c. 89, s. 124.

manner in which notices of appeal are ordinarily given, according to the practice of the court appealed from, unless such time is extended by the court of appeal (1): provided that it shall be lawful for the lord warden of the stannaries, by a special or general order, to remit at once any appeal allowed and regularly lodged with him against any order or decision of the vice-warden made in the matter of a winding-up to the court of appeal in chancery, which court shall thereupon hear and determine such appeal, and have power to require all such certificates of the vice-warden, records of proceedings below, documents and papers as the lord warden would or might have required upon the hearing of such appeal, and to exercise all other the jurisdiction and powers of the lord warden specified in the act of parliament passed in the eighteenth year of the reign of her present Majesty, chapter thirty-two, and any order so made by the court of appeal in chancery shall be final, without any further appeal.

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ries. *Southampton and Isle of Wight Steam Boat Co., e.p. Hopkins*, 33 L. J., B. 40; *London and Birmingham and Berks. Rail. Co., e.p. Curzon*, 3 Drew. 508; *North of England Banking Co., e.p. Crossfield*, 2 D. M. & G. 128; 22 L. J., Ch. 208.

Computation of time.

An order suspending an order for payment of calls does not prevent the time from running. *Welsh Potosi Mining Co., e.p. Clark*, 2 De G. & J. 245; 27 L. J., B. 25.

Under the 12 & 13 Vict. c. 108, s. 33, it was held that the three weeks were to be measured from the time at which the order was pronounced by the judge, not from the time of drawing up the order. *Risca Coal and Iron Co.*, 31 L. J., Ch. 429.

(1) This part of the section is imperative. *E.p. Green*, 24 L. J., Ch. 331.

Extension of time.

Special and peculiar circumstances must be shown to induce the court to extend the time; it is not enough to say that no harm is caused by the delay. *Barstow, Samuel & Co.*, 37 L. J., Ch. 51.

The fact that a contrary decision to the one sought to be appealed against had been pronounced by a judge of co-ordinate jurisdiction was not a ground on which the court of appeal could exercise its discretion of extending the time. *Hull Forge Co., e.p. Mitchell*, 36 L. J., Ch. 357.

The time will not be extended on an *ex parte* application. *Lama Italian Coal Co.*, 16 L. T. 258.

A person had paid a call, it being understood that no more would be required, and that he would get some of it back a year after; a fresh call was made by reason of decisions which had taken place in the meantime; he believed he was not liable; leave was given to appeal against his being placed on the list of contributories. *Wolverhampton, &c. R. Co., e.p. Holroyd*, 15 Jur. 696.

Judicial notice to be taken of signature of officers.

125. In all proceedings under this part of this act, all courts, judges and persons judicially acting, and all other officers, judicial or ministerial, of any court, or employed in enforcing the process of any court, shall take judicial notice of the signature of any officer of the Courts of Chancery or Bankruptcy in England or in Ireland, or of the Court of Session in Scotland, or of the registrar of the court of the vice-warden of the stannaries, and also of the official seal or stamp of the several offices of the Courts of Chancery or Bankruptcy in England or Ireland, or of the Court of Session in Scotland, or of the court of the vice-warden of the stannaries, when such seal or stamp is appended to or impressed on any document made, issued or signed under the provisions of this part of the act, or any official copy thereof.

Special commissioners for receiving evidence.

126. The commissioners of the Court of Bankruptcy and the judges of the county courts in England who sit at places more than twenty miles from the General Post Office, and the commissioners of bankrupt and the assistant barristers and recorders in Ireland, and the sheriffs of counties in Scotland, shall be commissioners for the purpose of taking evidence under this act in cases where any company is wound up in any part of the united kingdom, and it shall be lawful for the court to refer the whole or any part of the examination of any witnesses under this act to any person hereby appointed commissioner, although such commissioner is out of the jurisdiction of the court that made the order or decree for winding-up the company; and every such commissioner shall, in addition to any power of summoning and examining witnesses, and requiring the production or delivery of documents, and certifying or punishing defaults by witnesses, which he might lawfully exercise as a commissioner of the Court of Bankruptcy, judge of a county court, commissioner of bankrupt, assistant barrister or recorder or as a sheriff of a county, have in the matter so referred to him all the same powers of summoning and examining witnesses, and requiring the production or delivery of documents, and punishing defaults by witnesses, and allowing costs and charges and expenses to witnesses, as the court which made the order for winding-up the company has; and the examination so taken shall be returned or reported to such last-mentioned court in such manner as it directs.

25 & 26 Vict. c. 89, s. 127.

Court may order the examination of persons in Scotland.

127. The court may direct the examination in Scotland of any person for the time being in Scotland, whether a contributory of the company or not, in regard to the estate, dealings or affairs of any company in the course of being wound up, or in regard to the estate, dealings or affairs of any person being a contributory of the company, so far as the company may be interested therein by reason of his being such contributory, and the order or commission to take such examination shall be directed to the sheriff of the county in which the person to be examined is residing or happens to be for the time, and the sheriff shall summon such person to appear before him at a time and place to be specified in the summons for examination upon oath as a witness or as a haver and to produce any books, papers, deeds or documents called for which may be in his possession or power, and the sheriff may take such examination either orally or upon written interrogatories, and shall report the same in writing in the usual form to the court, and shall transmit with such report the books, papers, deeds or documents produced, if the originals thereof are required and specified by the order, or otherwise such copies thereof or extracts therefrom, authenticated by the sheriff, as may be necessary; and in case any person so summoned fails to appear at the time and place specified, or appearing refuses to be examined or to make the production required, the sheriff shall proceed against such person as a witness or haver duly cited, and failing to appear or refusing to give evidence or make production may be proceeded against by the law of Scotland; and the sheriff shall be entitled to such and the like fees, and the witness shall be entitled to such and the like allowances, as sheriffs when acting as commissioners under appointment from the Court of Session and as witnesses and havers are entitled to in the like cases according to the law and practice of Scotland: if any objection is stated to the sheriff by the witness, either on the ground of his incompetency as a witness, or as to the production required to be made, or on any other ground whatever, the sheriff may, if he thinks fit, report such objection to the court, and suspend the examination of such witness until such objection has been disposed of by the court.

Affidavits, &c. may be sworn in Ireland,

128. Any affidavit, affirmation or declaration required to be sworn or made, under the provisions or for the purposes of this

part of this act, may be lawfully sworn or made in Great Britain or Ireland, or in any colony, island, plantation or place under the dominion of her Majesty in foreign parts, before any court, judge or person lawfully authorized to take and receive affidavits, affirmations or declarations, or before any of her Majesty's consuls or vice-consuls, in any foreign parts out of her Majesty's dominions, and all courts, judges, justices, commissioners and persons acting judicially shall take judicial notice of the seal or stamp or signature (as the case may be) of any such court, judge, person, consul or vice-consul attached, appended or subscribed to any such affidavit, affirmation or declaration, or to any other document to be used for the purposes of this part of this act.

Scotland or the colonies before any competent court or person.

Voluntary Winding-up of Company (1).

129. A company (3) under this act may be wound up voluntarily (4).

Circumstances under which company may be wound up voluntarily (2).

(1.) Whenever the period, if any, fixed for the duration of the company by the articles of association expires, or whenever the event, if any, occurs, upon the occurrence of which it is provided by the articles of association that the company is to be dissolved, and the company in general meeting has passed a resolution requiring the company to be wound-up voluntarily;

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(1) A company covenanted to repay a certain sum of money in case they should displace an agent. The company was wound up voluntarily, and the business handed over to another company. The determination of the agency by the voluntary dissolution of the company was such a displacement as would support an action on the covenant. *Sterling* v. *Maitland*, 5 N. R. 46.

Nature of a voluntary winding-up.

(2) See 19 & 20 Vict. c. 47, s. 102, which did not contain pl. 3.

(3) A company registered under the Act of 1856, but not re-registered under the Act of 1862, can be wound up voluntarily. *Torquay Bath Co.*, 2 N. R. 98; 32 Beav. 581.

What companies may be wound up voluntarily.

The voluntary winding-up of such a company was continued under the supervision of the court. *London India Rubber Co.*, L. R., 1 Ch. 392; 35 L. J., Ch. 592.

And it seems that a company, which had not been registered, was wound up voluntarily. *Re Beaujolais Wine Co.*, L. R., 3 Ch. 15; 37 L. J., Ch. 220.

(4) See sects. 79, 80, *ante*, pp. 219, 220. The jurisdiction of the Court of Chancery to adjudicate upon a disputed claim against a company under the operation of a voluntary winding-up remains. *Lowndes* v. *Garnett, &c. Gold Mining Company* (*Limited*), 31 L. J., Ch. 451; 2 H. & M. 282.

25 & 26 Vict. c. 89, s. 129.

(2.) Whenever the company has passed a special resolution (1), requiring the company to be wound up voluntarily;

(3.) Whenever the company has passed an extraordinary resolution to the effect that it has been proved to their satisfaction that the company cannot by reason of its liabilities continue its business, and that it is advisable to wind up the same:

For the purposes of this act any resolution shall be deemed to be extraordinary which is passed in such manner as would, if it had been confirmed by a subsequent meeting, have constituted a special resolution, as hereinbefore defined.

Commencement of voluntary winding-up.

130. A voluntary winding-up shall be deemed to commence at the time of the passing of the resolution authorizing such winding-up (2).

Effect of voluntary winding-up on status of company.

131. Whenever a company is wound up voluntarily, the company shall, from the date of the commencement of such winding-up, cease to carry on its business, except in so far as may be required for the beneficial winding-up thereof, and all transfers of shares, except transfers made to or with the sanction of the liquidators, or alteration in the status of the members of the company taking place after the commencement of such winding-up, shall be void (3), but its corporate state and all its corporate powers shall, notwithstanding it is otherwise provided by its regulations, continue until the affairs of the company are wound up (4).

Notice of resolution to wind-up voluntarily.

132. Notice of any special resolution or extraordinary resolution passed for winding-up a company voluntarily shall be

(1) The mode of passing a special resolution is prescribed by the 51st section, *ante*, p. 202.

(2) The time of passing the resolution is the time of confirming the resolution by virtue of which it becomes a special resolution. *Ottoman Co., Henby's Case*, 16 W. R. 1164.

(3) Where directors have forfeited shares before the commencement of a voluntary winding-up, the liquidators cannot cancel the forfeiture. *China Steam Ship Co., Dawe's Case*, L. R., 6 Eq. 233; 37 L. J., Ch. 901.

As to the effect of this section on contracts for the sale of shares, see *Briderman* v. *Stone*, L. R., 2 C. P. 504; 36 L. J., C. P. 198, *ante*, p. 171; *Sheppard* v. *Murphy*, 16 W. R. 948; I. R., 1 Eq. 190.

(4) *Semble*, a voluntary winding-up puts an end to a power to amalgamate. *London, Bombay and Mediterranean Bank, e.p. Drew*, 36 L. J., Ch. 785.

given by advertisement as respects companies registered in England in the London Gazette, as respects companies registered in Scotland in the Edinburgh Gazette, and as respects companies registered in Ireland in the Dublin Gazette.

Consequences of voluntary winding-up.

133. The following consequences shall ensue upon the voluntary winding-up of a company:

(1.) The property of the company shall be applied in satisfaction of its liabilities *pari passu* (1), and, subject thereto, shall, unless it be otherwise provided by the regulations of the company, be distributed amongst the members according to their rights and interests in the company;

(2.) Liquidators shall be appointed for the purpose of winding-up the affairs of the company and distributing the property;

(3.) The company in general meeting (2) shall appoint such persons or person as it thinks fit to be liquidators or a liquidator, and may fix the remuneration to be paid to them or him (3);

(4.) If one person only is appointed, all the provisions herein contained in reference to several liquidators shall apply to him;

(5.) Upon the appointment of liquidators all the power of the directors shall cease, except in so far as the company in general meeting or the liquidators may sanction the continuance of such powers;

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(1) *Pari passu* applies to the liabilities existing at the commencement of the winding-up; and the court will not go into matters which have taken place before, in order to equalize the dividends. *Smith, Knight & Co., Ashbury's Case*, L. R., 5 Eq. 223; 37 L. J., Ch. 264.

(2) The regulations of a company, under the Act of 1856, provided that "no other business shall be transacted at a special general meeting than the business for which it shall have been expressly called." The company was wound up voluntarily. An appointment of liquidators was void, because notice of the intention to appoint had not been given. *Anglo-Californian Gold Mining Co.* v. *Lewis*, 6 H. & N. 174; 16 Jur. 1376; 9 W. R. 126.

(3) See sects. 135, 140, 141.

When the amount paid to joint liquidators has been ascertained, the court will not apportion it between them. *Semble*, they are in the position of partners, and as between themselves in the absence of agreement are entitled to be paid equally and not according to the proportion of time they have individually given to the winding-up. *Langham Hotel Co., e.p. Galsworthy*, 17 W. R. 463.

25 & 26 Vict. c. 89, s. 133.

(6.) When several liquidators are appointed, every power hereby given may be exercised by such one or more of them, as may be determined at the time of their appointment, or in default of such determination by any number not less than two (1);

(7.) The liquidators may, without the sanction of the court, exercise all powers by this act given to the official liquidator (2);

(8.) The liquidators may exercise the powers hereinbefore given to the court of settling the list of contributories of the company, and any list so settled shall be *primâ facie* evidence of the liability of the persons named therein to be contributories (3);

(9.) The liquidators may at any time after the passing of the resolution for winding-up the company, and before they have ascertained the sufficiency of the assets of the company, call on all or any of the contributories for the time being settled on the list of contributories to the extent of their liability to pay all or any sums they deem necessary to satisfy the debts and liabilities of the company, and the costs, charges and expenses of winding it up, and for the adjustment of the rights of the contributories amongst themselves, and the liquidators may in making a call take into consideration the probability that some of the contributories upon whom the same is made may partly or wholly fail to pay their respective portions of the same;

(10.) The liquidators shall pay the debts of the company, and adjust the rights of the contributories amongst themselves (4).

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(1) Liquidators resolved that one of them should exercise their statutory powers. One accepted bills of exchange, the acceptance was nugatory. *London and Mediterranean Bank, e.p. London and South Western Bank*, 36 L. J., Ch. 807; 16 W. R. 1003.

(2) See sects. 95, 138, 139, 159, 160.

(3) The fact that notice was not given to a contributory when he was settled on the list was no defence to an action for calls, as the list is only *primâ facie* evidence, not, as in a compulsory winding-up, conclusive. *Brighton Arcade Co.* v. *Dowling*, L. R., 3 C. P. 175; 37 L. J., C. P. 125.

(4) A paid-up shareholder is a contributory, and therefore the

Effect of winding-up on share capital of company limited by guarantee (1).

134. Where a company limited by guarantee, and having a capital divided into shares, is being wound up voluntarily, any share capital that may not have been called up shall be deemed to be assets of the company, and to be a specialty debt due from each member to the company to the extent of any sums that may be unpaid on any shares held by him, and payable at such time as may be appointed by the liquidators.

Power of company to delegate authority to appoint liquidators (2).

135. A company about to be wound up voluntarily, or in the course of being wound up voluntarily, may, by an extraordinary resolution, delegate to its creditors, or to any committee of its creditors, the power of appointing liquidators or any of them, and supplying any vacancies in the appointment of liquidators, or may by a like resolution enter into any arrangement with respect to the powers to be exercised by the liquidators, and the manner in which they are to be exercised; and any act done by the creditors, in pursuance of such delegated power, shall have the same effect as if it had been done by the company.

Arrangement when binding on creditors (3).

136. Any arrangement entered into between a company about to be wound up voluntarily, or in the course of being wound up voluntarily, and its creditors, shall be binding on the company if sanctioned by an extraordinary resolution, and on the creditors if acceded to by three-fourths in number and value of the creditors, subject to such right of appeal as is hereinafter mentioned.

Power of creditor or contributory to appeal.

137. Any creditor or contributory of a company that has in manner aforesaid entered into any arrangement with its creditors may, within three weeks from the date of the completion of such arrangement, appeal to the court against such arrangement, and the court may thereupon, as it thinks just, amend, vary or confirm the same (4).

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liquidator may make a call on the other shareholders to recoup paid-up shareholders. *Anglesea Colliery Co.*, L. R., 1 Ch. 555.

A paid-up shareholder was entitled to be put on the list of contributories, although the liquidator alleged the company was insolvent. *Hollyford Mining Co.*, I. R., 1 Eq. 39.

(1) See sect. 9, *ante*, p. 182; s. 90, *ante*, p. 234.

(2) See sects. 140, 141, *post*, p. 261.

(3) Compare sects. 159, 160, *post*, pp. 274, 275.

(4) Every application under this section shall be by petition or

25 & 26 Vict. c. 89, s. 138.

Power for liquidators or contributories in voluntary winding-up to apply to court.

138. Where a company is being wound up voluntarily the liquidators or any contributory of the company may apply to the court in England, Ireland or Scotland, or to the lord ordinary on the bills in Scotland in time of vacation, to determine any question arising in the matter of such winding-up, or to exercise, as respects the enforcing of calls, or in respect of any other matter, all or any of the powers which the court might exercise if the company were being wound up by the court; and the court or lord ordinary in the case aforesaid, if satisfied that the determination of such question, or the required exercise of power, will be just and beneficial, may accede, wholly or partially, to such application, on such terms and subject to such conditions as the court thinks fit, or it may make such other order, interlocutor or decree on such application as the court thinks just (1).

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motion, or, if the judge shall so direct, by summons at chambers. General Order of November, 1862, rule 51, *post*.

Proper applicant.

(1) A liquidator having allowed a claim ought not, on the instigation of dissenting shareholders, to bring the matter before the court under this section, but the shareholders should do so themselves. *Licensed Victuallers' Plate Glass Insurance Co.*, 15 W. R. 917.

Staying actions.

Proceedings in an action brought by a creditor before the commencement of a voluntary winding-up were stayed, the creditor being allowed to prove for the debt, the costs of the action and of the application. *Re The Life Association of England*, 34 L. J., Ch. 64.

In re The Keynsham Co., 2 N. R. 479; 33 Beav. 123, an injunction was granted on terms that the creditor should be allowed access to all the proceedings in the winding-up, with liberty to apply.

Staying execution.

An action having been brought during a voluntary winding-up on bills of exchange, execution was stayed, the creditor being allowed to add his costs to the debt. *The Peninsular, &c. Banking Co.*, 35 Beav. 280.

In another case, where an action was brought on bills of exchange, the plaintiff having notice of the winding-up proceedings, an injunction was granted with costs. *East Kent Shipping Co.*, 18 L. T., N. S. 849.

A creditor had notice that a resolution had been passed to wind up a company voluntarily. On the same day as the resolution was confirmed he commenced an action against the company, and signed judgment; he was restrained from issuing execution. *Sablonière Hotel Co.*, L. R., 3 Eq. 74.

But in another case a resolution was passed to wind a company up voluntarily on May 7th; it was confirmed on May 28th; an action was commenced on May 23rd; an injunction to stay execution was refused. *Hull Forge Co., e.p. Mitchell*, 36 L. J., Ch. 337.

See further, sects. 85, 87, *ante*, p. 225, 228; sects. 163, 201, 202, *post*.

Power of liquidators to call general meeting.

139. Where a company is being wound up voluntarily the liquidators may, from time to time, during the continuance of such winding-up, summon general meetings of the company for the purpose of obtaining the sanction of the company by special resolution or extraordinary resolution (1), or for any other purposes they think fit; and in the event of the winding-up continuing for more than one year, the liquidators shall summon a general meeting of the company at the end of the first year, and of each succeeding year from the commencement of the winding-up, or as soon thereafter as may be convenient, and shall lay before such meeting an account showing their acts and dealings, and the manner in which the winding-up has been conducted during the preceding year.

Power to fill up vacancy in liquidators.

140. If any vacancy occurs in the office of liquidators appointed by the company, by death, resignation or otherwise, the company in general meeting may, subject to any arrangement they may have entered into with their creditors (2), fill up such vacancy, and a general meeting for the purpose of filling up such vacancy may be convened by the continuing liquidators, if any, or by any contributory of the company, and shall be deemed to have been duly held if held in manner prescribed by the regulations of the company, or in such other manner as may, on application by the continuing liquidator, if any, or by any contributory of the company, be determined by the court.

Power of court to appoint liquidators (3).

141. If from any cause whatever there is no liquidator acting in the case of a voluntary winding-up, the court may, on the application of a contributory, appoint a liquidator or liquidators; the court may also, on due cause shown, remove any liquidator, and appoint another liquidator to act in the matter of a voluntary winding-up (3).

Liquidators on conclusion of winding-up to make up an account.

142. As soon as the affairs of the company are fully wound up, the liquidators shall make up an account showing the manner in which such winding-up has been conducted, and the property of the company disposed of; and thereupon they shall call a general meeting of the company for the purpose of having the account laid before them and hearing any explanation that

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(1) See sects. 135, 136, *ante*, p. 259.
(2) See General Order of November, 1862, rule, 51, *post*.
(3) See sect. 150, *post*, p. 265.

25 & 26 Vict. c. 89, s. 142.

may be given by the liquidators: the meeting shall be called by advertisement, specifying the time, place and object of such meeting; and such advertisement shall be published one month at least previously to the meeting, as respects companies registered in England in the London Gazette, and as respects companies registered in Scotland in the Edinburgh Gazette, and as respects companies registered in Ireland in the Dublin Gazette.

Liquidators to report meeting to registrar.

143. The liquidators shall make a return to the registrar of such meeting having been held, and of the date at which the same was held, and on the expiration of three months from the date of the registration of such return the company shall be deemed to be dissolved (1): if the liquidators make default in making such return to the registrar they shall incur a penalty not exceeding five pounds for every day during which such default continues.

Costs of voluntary liquidation.

144. All costs, charges and expenses properly incurred in the voluntary winding-up of a company, including the remuneration of the liquidators, shall be payable out of the assets of the company in priority to all other claims (2).

Saving of rights of creditors.

145. The voluntary winding-up of a company shall not be a bar to the right of any creditor of such company to have the same wound up by the court, if the court is of opinion that the rights of such creditor will be prejudiced by a voluntary winding-up (3).

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(1) Where, owing to the intervention of the long vacation, a petition to wind up a company was not heard till after the expiration of three months from the date of the registration of the return under sect. 142, a winding-up order was made. *Crookhaven Mining Co.*, L. R., 8 Eq. 69.

(2) Compare sect. 110, *ante*, p. 244.

Petitions by creditors to wind up in spite of voluntary winding-up.

(3) As a general rule, creditors have a right to have a company wound up by the court, but there may be circumstances under which the company could claim the indulgence of the court. *Per* V. C. Wood, in a case where he made an order on the petition of a creditor claiming three-fourths of the debts. The voluntary winding-up had been going on for more than a year, and the only defence was that the liquidator was prosecuting a claim against the late manager. *Manchester Queensland Cotton Co., e.p. Bank of New South Wales*, 15 W. R. 1070.

In *Barned's Banking Co.*, 14 W. R. 722, a compulsory order was made on the petition of creditors, without waiting till a petition by shareholders to continue the voluntary winding-up under the supervision of the court could be heard.

146. Where a company is in course of being wound up voluntarily, and proceedings are taken for the purpose of

Power of court to adopt proceedings of

In *The General Rolling Stock Co.*, 13 W. R. 423; 34 Beav. 314, a petition was ordered to stand over, the company undertaking to pay the petitioning creditor his debt.

How far wishes of majority of creditors to be consulted.

On a creditor's petition for a compulsory winding-up, at the instance of a majority of creditors and shareholders, the winding-up was continued under the supervision of the court. *Trowbridge Water Supply Co.*, 18 L. T. 115.

In a case under the Acts of 1856, 1857, L. J. Turner gave the following reasons for preferring a compulsory to a winding-up order: "I think that in a case of this enormous magnitude, where such vast interests are at stake, where the most ample powers which the law has given are required to be exercised, where there have been transactions justifying, if not requiring, investigation, where it may be doubtful whether the property of the shareholders will answer the liabilities, where there is danger to the creditors—that of the shareholders escaping their liabilities,—in all such cases my very clear and decided opinion is, that, having regard to the powers which may be put in force under a winding-up by the court, and which cannot be exercised in the case of a voluntary winding-up, a winding-up by the court ought to be preferred to a voluntary winding-up. And I think that, the legislature not having thought proper to provide that the majority of creditors should have the power to bind the minority in the choice of proceedings, I should not be disposed to give any decided weight to the opinion of the majority of creditors against the minority upon the question as to the choice of proceedings without being fully satisfied, not merely by the votes of the majority, but by the facts of the case, that there would be secured to the minority the full dividend which they might obtain if the course of proceeding which they desired was adopted." *Northumberland and Durham District Banking Co.*, 2 De G. & J. 378.

Course pursued when debt is disputed.

Where the debt of the petitioner was considered unreasonable by the liquidator, and was the only debt unpaid, the petition was ordered to stand over, to be dismissed ultimately with or without costs, according as an action which the petitioner had brought, and to which the liquidator had appeared, should succeed or fail. *Inventors' Association*, 2 Dr. & Sm. 553.

A petition by contributories and creditors whose debts were disputed was dimissed; *bonâ fide* proceedings to wind up voluntarily were pending. *Madras Coffee Co.*, 17 W. R. 643.

Petitions by contributories.

The court will not generally make an order for compulsory winding-up, in spite of a voluntary winding-up, at the instance of a contributory. *Re Beaujolais Wine Co.*, L. R., 3 Ch. 15; 37 L. J., Ch. 220. L. J. Turner doubted whether it would do so in every event. *Bank of Gibraltar and Malta*, L. R., 1 Ch. 69; 35 L. J., Ch. 49.

In *Oriental Commercial Bank*, 14 L. T. 755; 15 W. R. 7, a compulsory order was refused; but on appeal, all creditors and most of the shareholders having withdrawn their opposition, an order was made. 15 L. T. 8.

In *British Alkali Co., e.p. Guest*, 22 L. J., Ch. 241, the court refused to make an order. See *Madras Coffee Co.*, 17 W. R., 643, *supra*.

25 & 26 Vict. c. 89, s. 146.

voluntary winding-up.

having the same wound up by the court, the court may, if it thinks fit, notwithstanding that it makes an order directing the company to be wound up by the court, provide in such order or in any other order for the adoption of all or any of the proceedings taken in the course of the voluntary winding-up.

Winding-up subject to the Supervision of the Court.

Power of court, on application, to direct winding-up subject to supervision (1).

147. When a resolution has been passed by a company to wind up voluntarily, the court may make an order directing that the voluntary winding-up should continue, but subject to

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In *The London Flour Co.*, 16 W. R. 475, an order was made, which was discharged on appeal. 16 W. R. 552.

In *The United Merthyr Collieries Co.*, 16 L. T. 170, a compulsory order was refused, but the voluntary winding-up was continued under supervision.

Where the petition was supported by the creditors, and they were not likely to be paid in full, an order was made. *Lonsdale Vale Iron Co.*, 16 W. R. 601.

The voluntary winding-up being connected with matters *ultra vires*,

Where a company had passed a resolution to wind itself up voluntarily, and at the same time to amalgamate with another company, a dissentient shareholder petitioned for a compulsory winding-up or to continue the winding-up under supervision; the court dismissed the petition so far as it prayed to continue the winding-up under supervision, and ordered it to stand over to allow proceedings to be taken to set aside the amalgamation. *Imperial Bank of China, India and Japan*, L. R., 1 Ch. 339; 35 L. J., Ch. 445.

or tainted with fraud.

The court will not interfere, at the instance of contributories, with a voluntary winding-up, except where the resolution to wind up has been obtained by fraud or inequitable overbearing of the rights of a dissentient minority by improper influence. *London and Mercantile Discount Co.*, L. R., 1 Eq. 277; 35 L. J., Ch. 239.

Notwithstanding that a company is in course of being wound up voluntarily with the assent of a large majority of its creditors, an order for winding-up by the court will be directed where there is danger of want of efficient supervision. (L. J. Turner dissented.) *Littlehampton, Havre, &c. Steam Ship Co., e.p. Ellis*, 34 L. J., Ch. 237.

The court finding a conflict between the members, and that there were matters which required investigation, made a compulsory winding-up order. *West Surrey Tanning Co.*, L. R., 2 Eq. 737.

Misconduct of liquidators.

Under the Act of 1856 a compulsory winding-up order was made on account of delay and neglect of the liquidator to account; *Fire Annihilator Co.*, 2 N. R. 99; 32 Beav. 561; but, under this act, a compulsory order on account of misconduct of the liquidator was refused, as the proper course was to apply in chambers to change the liquidator; *London and Mediterranean Banking Co.*, 15 W. R. 33; *London Bank of Scotland*, 15 W. R. 1103; or have him removed. *London Flour Co.*, 16 W. R. 552.

Compare sect. 91, *ante*, p. 231; sect. 149, *post*, p. 265.

(1) The court will not order the winding-up to be continued under

such supervision of the court, and with such liberty for creditors, contributories or others to apply to the court, and generally upon such terms and subject to such conditions as the court thinks just (1).

Petition for winding-up, subject to supervision

148. A petition, praying wholly or in part that a voluntary winding-up should continue, but subject to the supervision of the court, and which winding-up is hereinafter referred to as a winding-up subject to the supervision of the court, shall, for the purpose of giving jurisdiction to the court over suits and actions, be deemed to be a petition for winding-up the company by the court.

Court may have regard to wishes of creditors.

149. The court may, in determining whether a company is to be wound up altogether by the court or subject to the supervision of the court, in the appointment of liquidator or liquidators, and in all other matters relating to the winding-up subject to supervision, have regard to the wishes of the creditors or contributories as proved to it by any sufficient evidence, and may direct meetings of the creditors or contributories to be summoned, held and regulated in such manner as the court directs for the purpose of ascertaining their wishes, and may appoint a person to act as chairman of any such meeting, and to report the result of such meeting to the court: in the case of creditors, regard shall be had to the value of the debts due to each creditor, and in the case of contributories to the number of votes conferred on each contributory by the regulations of the company (2).

Power to court to appoint additional liquidators in winding-up subject to supervision (3).

150. Where any order is made by the court for a winding-up subject to the supervision of the court, the court may, in such order or in any subsequent order, appoint any additional liquidator or liquidators; and any liquidators so appointed by

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the supervision of the court at the instance of a dissentient minority of shareholders, except when the resolution to wind up the company voluntarily was obtained by fraud or improper influence, and therefore is not the voice of the company. *St. David's Gold Mining Co.*, 14 W. R. 755; *Imperial Mercantile Credit Co.*, 12 Jur. 739.

(1) See General Order of November, 1862, third Schedule, form (4).

(2) See sect. 91, *ante*, p. 231, and General Order of November, 1862, rules 45, 47.

(3) The court may remove a liquidator, appointed while the company was being wound up voluntarily, while the winding-up is being

25 & 26 Vict. c. 89, s. 150.

the court shall have the same powers, be subject to the same obligations, and in all respects stand in the same position as if they had been appointed by the company (1): the court may from time to time remove any liquidators so appointed by the court, and fill up any vacancy occasioned by such removal, or by death or resignation.

Effect of order of court for winding-up subject to supervision.

151. Where an order is made for a winding-up subject to the supervision of the court, the liquidators appointed to conduct such winding-up may, subject to any restrictions imposed by the court, exercise all their powers, without the sanction or intervention of the court, in the same manner as if the company

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continued under supervision. *London Quays and Warehouses Co.*, L. R., 3 Ch. 394; 37 L. J., Ch. 397; *United Merthyr Collieries Co.*, 16 L. T. 170; *Marseilles Extension R. and Land Co.*, L. R., 4 Eq. 692; *Old Wheal Mining Co., e.p. Pulbrook*, 13 W. R. 3 De G. & S. 348.

Discretion of the court.

A company passed a resolution for a voluntary winding-up. Before the meeting to confirm it took place a petition was presented, praying for a compulsory winding-up, or, in the alternative, that if the resolution should be confirmed the winding-up might be made subject to the supervision of the court. The petition was ordered to stand over till after the confirmation meeting should have been held; the Master of the Rolls expressed an opinion that the company ought not to appoint any liquidator, and required an undertaking accordingly. The resolution was duly confirmed, but no liquidator was appointed. On the hearing of the petition, an order to continue the winding-up under the supervision of the court was made; and the Master of the Rolls subsequently selected out of several persons nominated as liquidators the person supported by the smallest number of contributories. A motion was afterwards made by some contributories, supported by a large majority, that the liquidator should be removed or additional liquidators appointed to act with him; but it was not alleged that the person appointed was in any way an improper person.

It was held on appeal that as the contributories did not at the proper time exercise their right of appointing a liquidator, it became the duty of the court to appoint one. And an appointment having been made, the court of appeal ought not to interfere with the discretion of the primary judge.

The court refused to appoint an additional liquidator on the ground that there being a very hostile feeling between the parties, an appointment of one additional liquidator would lead to litigation and expense, and if more than one were appointed, they would out-vote the original liquidator.

The court varied the order of the court below by imposing certain restrictions on the liquidator. *London Quays and Warehouses Co., e.p. Haigh*, L. R., 3 Ch. 394; 37 L. J., Ch. 397.

(1) See sect. 135, *ante*, p. 259.

were being wound up altogether voluntarily (1); but, save as aforesaid, any order made by the court for a winding-up, subject to the supervision of the court, shall for all purposes, including the staying of actions, suits and other proceedings, be deemed to be an order of the court for winding-up the company by the court (2), and shall confer full authority on the court to make calls, or to enforce calls made by the liquidators, and to exercise all other powers which it might have exercised if an order had been made for winding-up the company altogether by the court; and in the construction of the provisions whereby the court is empowered to direct any act or thing to be done to or in favour of the official liquidators, the expression official liquidators shall be deemed to mean the liquidators conducting the winding-up, subject to the supervision of the court.

Appointment in certain cases of voluntary liquidators to office of official liquidators (3).

152. Where an order has been made for the winding-up of a company subject to the supervision of the court, and such order is afterwards superseded by an order directing the company to be wound up compulsorily, the court may in such last-mentioned order, or in any subsequent order, appoint the voluntary liquidators or any of them, either provisionally or permanently, and either with or without the addition of any other persons, to be official liquidators.

Supplemental Provisions.

Dispositions after the commencement of the winding-up avoided.

153. Where any company is being wound up by the court or subject to the supervision of the court all dispositions of the property, effects and things in action of the company and every transfer of shares, or alteration in the status of the members of the company made between the commencement of the winding-up and the order for winding-up, shall, unless the court otherwise orders, be void (4).

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(1) See sect. 133, *ante*, p. 257.
(2) See sect. 79, *et seq.*, *ante*, p. 219.
(3) See sect. 92, *ante*, p. 233.
(4) See sects. 163, 164, *post*, pp. 280, 281.

Dispositions of property.

Bonâ fide dispositions of property of a company in the ordinary course of its trade, made after the presentation of a petition for winding-up and completed before the winding-up order, will, as of course, in the exercise of the discretion given to the court under sect. 153, be confirmed. Where, however, such dispositions are incomplete and rest in contract at the time of the winding-up order,

25 & 26 Vict. c. 89, s. 154.

The books of the company to be evidence.

154. Where any company is being wound up, all books, accounts and documents of the company and of the liquidators shall, as between the contributories of the company, be *primâ facie* evidence of the truth of all matters purporting to be therein recorded.

As to disposal of books, accounts and documents of the company.

155. Where any company has been wound up under this act and is about to be dissolved, the books, accounts and documents of the company and of the liquidators may be disposed of in the following way; that is to say, where the company has been wound up by or subject to the supervision of the court, in such way as the court directs, and where the company has been wound up voluntarily, in such way as the company by an extraordinary resolution directs; but after the lapse of five years from the date of such dissolution (1), no responsibility shall rest on the company, or the liquidators, or any one to whom the custody of such books, accounts and documents has

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the court has no discretionary power to order the contract to be fulfilled, and the person with whom it was entered into, though he has paid his money, has only a claim for damages in respect of the breach of contract.

Where a customer of a trading company had *bonâ fide* ordered and paid for goods, and the company had loaded the goods on a railway to his address and sent him the invoices, the disposition was complete. *Wiltshire Iron Co., e.p. Pearson*, L. R., 3 Ch. 443.

Transfers of shares.

Where in a winding-up under supervision the liquidator had substituted the name of a transferee for that of the transferor on the register of shareholders, the court refused to disturb the register at the instance of the transferee. *Overend, Gurney & Co., e.p. Ward*, 36 L. J., Ch. 416; L. R., 4 Eq. 189.

A transfer, registered between the time of the presentation of a petition and an order made upon the petition to wind up a company, was not affected by this section. *Barned's Banking Co., e.p. Contract Corp.*, L. R., 3 Ch. 105; 37 L. J., Ch. 81.

A *bonâ fide* sale of shares made after presentation of a petition to wind up but before advertisement of it, the parties being ignorant of the position of the company, may be supported by the court in the exercise of its discretion under sect. 153. *London, Hamburgh and Continental Exchange Bank, Emmerson's Case*, L. R., 1 Ch. 433; 2 Eq., 231; 36 L. J., Ch. 177; 35 L. J., Ch. 652.

Neither this section nor sect. 131, *ante*, p. 256, affect the mutual rights and liabilities of parties to contract for the sale of shares. *Chapman* v. *Shepherd, Whitehead* v. *Izod*, L. R., 2 C. P. 228; 36 L. J., C. P. 114; *Rudge* v. *Bowman*, L. R., 3 Q. B. 689; 37 L. J., Q. B. 193; *Bilderman* v. *Stone*, L. R., 2 C. P. 504; 36 L. J., C. P. 198; and other cases, *ante*, Ch. VII.

(1) See sect. 111, *ante*, p. 244.

been committed, by reason that the same, or any of them, cannot be made forthcoming to any party or parties claiming to be interested therein.

Inspection of books.

156. Where an order has been made for winding-up a company by the court, or subject to the supervision of the court, the court may make such order for the inspection by the creditors and contributories of the company of its books and papers as the court thinks just, and any books and papers in the possession of the company may be inspected by creditors or contributories, in conformity with the order of the court, but not further or otherwise (1).

Power of assignee to sue.

157. Any person to whom any thing in action belonging to the company is assigned, in pursuance of this act, may bring or defend any action or suit relating to such thing in action in his own name.

Debts of all descriptions to be proved.

158. In the event of any company being wound up under this act, all debts payable on a contingency, and all claims against the company, present or future, certain or contingent, ascertained or sounding only in damages, shall be admissible to proof against the company, a just estimate being made, so far as is possible, of the value of all such debts or claims as may be subject to any contingency or sound only in damages, or for some other reason do not bear a certain value (2).

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(1) See General Order of November, 1862, rule 58.

Damages.

(2) For the principles on which the amount of salary and compensation payable to a manager in respect of the sudden termination of his engagement on account of the winding-up are determined, see *English Joint Stock Banking Co., e.p. Yelland*, L. R., 4 Eq. 350; *London and Colonial Co., e.p. Clark*, L. R., 7 Eq. 550.

Damages for breach of contract by the non-acceptance of goods on account of the winding-up were allowed. *The Contract Corp., e.p. Ebbw Vale Co.*, L. R., 8 Eq. 14.

Damages were allowed for breach of contract for non-delivery and otherwise in a case where the contract had been carried out during the winding-up. *Trent and Humber Ship Building Co., e.p. Cambrian Steam Packet Co.*, L. R., 6 Eq. 396; 4 Ch. 112; 38 L. J., Ch. 38; 37 L. J., Ch. 686.

Directors entered into a contract with a broker with respect to the allotment of shares, under which the broker was to receive 100*l.* down and 400*l.* on the allotment of all the shares. In the meantime the directors resolved to wind up voluntarily. The broker recovered 250*l.* as damages. *Inchbald* v. *Western Neilgherry Coffee Co.*, 5 N. R., 54; 34 L. J., C. P. 15.

Indemnity.

M. held shares in one company as trustee for another; he was allowed to prove in the winding-up of the second company for the

25 & 26 Vict. c. 89, s. 158.

amount of calls he had paid in respect of his shares in the first company. *National Financial Co., e.p. Oriental Commercial Bank*, L. R., 3 Ch. 791.

A company taking over the business and assets of another covenanted to indemnify the latter against their debts; proof was allowed in respect of such indemnity. *British Provident Assurance Association, e.p. Anglo-Australian Assurance Co.*, 4 N. R. 48.

Contingent debts.

A company which had taken a lease of a quarry and covenanted for payment of the rent was ordered to be wound up. On the application of the lessor it was ordered, that a claim should be entered for the whole value of the future rent, with the qualification that the lessor should not receive more than the amount which the company might become liable to pay under the covenant. The order was made without prejudice to any application to dissolve the company; but no order of dissolution was to be made without notice to the lessor. *Haytor Granite Co.*, L. R., 1 Ch. 77.

That order was followed. *London and Colonial Co., e.p. Horsey*, 16 W. R. 535; L. R., 5 Eq. 562; 37 L. J., Ch. 393, where it was also held that the lessor was not entitled to have an amount equal to dividends on future rent impounded.

Though the Winding-up Act, 1848, did not mention contingencies, the value of an annuity was proveable under that act. *English and Irish Church Assurance Co., Hunt's Case*, 7 L. T. 669; 2 H. & M. 79.

Equitable debts.

As to the allowance of claims in respect of matters *ultra vires* from which a company has benefited, see *ante*, p. 88.

Proof by assignee of debt.

A contributory had bought up a debt for a small sum; he was allowed to prove for the whole debt. *Humber Iron Works*, L. R., 8 Eq. 122.

The assignee of a debt due from a company by giving notice to the official liquidator perfects the assignment, so that an application by the assignee in bankruptcy of the creditor to prove was not allowed; but there being some suspicion of the *bona fides* of the assignment the application was allowed to stand over. *Breech-Loading Armoury Co., Wragg's Case*, L. R., 5 Eq. 284.

But where a creditor of a company gave an order to his creditors on the official liquidator to pay the amount due to them, it was held that the official liquidator was not bound to recognize the order except under the order of the court. *Dublin Cattle Market Co.*, I. R. 1 Eq. 153.

Garnishee order.

The garnishee clauses of the Common Law Procedure Act, 1854 (17 & 18 Vict. c. 125, ss. 61—65), were held to apply to funds in the hands of an official manager. *Warwick and Worcester R. Co., e.p. Turner*, 30 L. J., Ch. 92; 2 D. F. & J. 354.

Novation.

Company B. took over the business of company A. Annuitants of company A., who had received payments from company B., were allowed to prove in the winding-up of company B., but simple contract creditors of company A. were not allowed to prove. *British Provident Life and Fire Assurance Association, e.p. Teete, e.p. Rumney*, 4 N. R. 48.

G. agreed to make advances to S. and K., contractors. A company was formed to carry on the business of S. and K. G. wrote to S.: "In reference to the notes for the advances made, I suppose they will be drawn jointly and severally in the names of S. and K., not

by the company, as our arrangement was with you as individuals, and we know nothing of the company in the matter." The notes were drawn in the names of S. and K. and carried to their credit with a firm of bankers, of which G. was partner. G. claimed interest from the company, and was paid, and the balance was carried over to a new account in the name of the company. The company went into liquidation, and G. sought to prove for the advances. His claim was rejected.

Though, in a case of this kind, slight circumstances would ordinarily be sufficient to constitute a new firm, taking over a business of an old firm, debtors of creditors of the old firm who had notice of the transaction, yet, after express repudiation, slight circumstances would not be sufficient. *Smith, Knight & Co., e.p. Gibson*, 17 W. R. 833.

A limited company was formed to carry on the business of a previously existing limited bank. The assets of the old company were handed over to the new company, the name of which differed but slightly from that of the old company. J. was a creditor of the old bank in respect of a deposit at interest. No notice of the transfer of the business was sent to J., but the interest for two half-years was paid to and accepted by J.'s agents. Letters enclosing bills for the amount of interest sent to J.'s agents were headed in the name of the new bank, and stated the deposit to be with them. It was held, that J. had never accepted the company as debtors, and a claim by him was expunged. *Commercial Banking Corporation of India and the East, Jones's Claim*, 16 W. R. 958.

Debenture. As to the proof of debts due on bond, see *ante*, p. 43.

Disputed debts. Where there is a question of doubt whether a debt is due from the company, the court will not decide on the claim, but will allow an action to be brought; *Sea, Fire and Life Assurance Co., e.p. Gwyn*, 1 Jur., N. S. 300; *London, Birmingham, &c. R. Co., e.p. Higgins*, 2 Jur., N. S. 178; but unless there is a doubtful question proof is to be allowed. *London, Birmingham, &c. R. Co., e.p. Dayrell*, 1 Jur., N. S. 1129.

Priorities amongst creditors. Servants are not entitled to priority; *General Rolling Stock Co., Chapman's Case*, L. R., 1 Eq. 346; except in cost-book mining companies. 32 & 33 Vict. c. 19, s. 26, provides:—

Wages. *Wages of Miners, &c.*]—On a company formed for or engaged in working a mine (including a company registered under any of the Joint Stock Companies Acts) being wound up in the court of the vice-warden or any other court or otherwise, the date of the winding-up order having been not earlier than two months after the passing of this act, then and in every such case the amount (if any) due at the date of the winding-up order to miners, artisans and labourers employed, wholly or in part, in or about the mine, in respect of their wages or other earnings in relation to the mine, not exceeding three months' wages or earnings to each such person, shall be paid in priority to all other debts of the company.

Costs. The costs of winding-up have priority. See sects. 86, 96, 110, *ante*, pp. 226, 236, 244.

Secured debts (*a*). Secured creditors are entitled to prove for the whole amount of their debts without deducting the value of their securities. *Xeres*

(*a*) In the case of a winding-up where proceedings were pending on

25 & 26 Vict. c. 89, s. 158.

Wine Shipping Co., e.p. The Alliance Bank, L. R., 3 Ch. 769; overruling *S. C.*, 37 L. J., Ch. 415.

For the purpose of proof the amounts of their debts are to be ascertained at the time of sending in their claims. *Barned's Banking Co., e.p. Kellock*, L. R., 3 Ch. 769.

The holder of a bill of exchange accepted by the company could only prove for the balance, after deducting what he had received from the estate of the drawer. *Oriental Commercial Bank, e.p. Maxoudoff*, L. R., 6 Eq. 582. Compare *e. p. Forward*, 17 W. R. 981, *post;* General Order of November, 1862, rule 20.

A company had accepted bills of exchange, and issued debentures of a smaller amount to secure the same debt. The creditor sought to prove for both amounts, but proof was not allowed. *Bakeley Ordnance Co., e.p. Metropolitan Provincial Bank*, 17 W. R. 896.

Mortgagees contracted to sell the property mortgaged after the commencement of a winding-up, but before sending in a claim for the amount of their debt. After sending in their claim they entered into a new contract, whereby the rights and obligations of the original purchaser were transferred to two other persons; the first contract being declared to be cancelled, but the deposit already paid being considered as paid on account of the new contract. It was held, that the mortgagees having converted their security could only prove for the balance of their debt. *Oxford and Canterbury Halls Co., e.p. London and County Bank*, 38 L. J., Ch. 614.

In order to entitle a secured creditor to prove in a winding-up for his whole debt without regard to the value of his security, he must

the 31st July, 1868, the Liquidation Act, 1868 (31 & 32 Vict. c. 68), s. 12, provides—

Foreclosure by Notice.

12. *Power for creditors to foreclose by notice.*]—For facilitating the settlement of claims of secured creditors the following provisions shall have effect:—

(1.) In any case of bankruptcy, arrangement or winding-up within this act, any person being or claiming to be a creditor on the estate in liquidation, and holding or claiming a security, charge or lien on the assets of the estate, may, without suit, give notice in writing to the liquidators and the debtor, stating his debt or demand, and the security, charge or lien which he holds or claims, and requiring payment of his debt or demand within a time therein specified, not being less than six months from the delivery of the notice:

(2.) Unless the liquidators within the time specified either comply with the notice, or give to the creditor a counter-notice to the effect that they dispute his right to the security, charge or lien held or claimed by him, then from and after the expiration of the time specified the creditor shall be entitled and bound to retain and accept, in full and final satisfaction of the debt or demand stated in his notice, that portion of the assets on which he holds or claims the security, charge or lien, and all right and title of the liquidators and debtor therein shall thenceforth be foreclosed:

(3.) The liquidators and debtor shall, at the cost of the estate, execute and do all deeds and things necessary or proper for vesting in the creditor such portion of the assets as aforesaid, free from all right of redemption by such liquidators or debtor.

not only have carried in a claim for the whole debt before realising his security, but must have also been an actual creditor and not merely the holder of bills of exchange not yet due. *Re Barned's Bank, Coupland's Case*, 38 L. J., Ch. 575.

Negotiable instruments.

A., being under liability to a bank upon his acceptance to fall due in July, 1866, took in the ordinary course of business an acceptance of the bank. This acceptance fell due and was dishonoured on the 18th of June, and on the 23rd of June an order was made for winding-up the bank. A.'s acceptance having matured in the hands of the official liquidator, it was held, that A.'s right of set-off was not interfered with by the winding-up order. *Agra and Masterman's Bank, Anderson's Case*, L. R., 3 Eq. 337.

But the holder of over-due bills accepted by the company cannot restrain the official liquidator from negotiating bills on which the claimant is liable, but which are not due. *Commercial Banking Corporation of India and the East, e.p. Smith Fleming*, L. R., 1 Ch. 538; 36 L. J., Ch. 333.

The holders of bills indorsed by one company and accepted by another had received from the two estates dividends amounting to twenty shillings in the pound. They could not receive dividends in respect of interest until all the other creditors had received twenty shillings in the pound. *Re Joint Stock Discount Co., e.p. Warrant Finance Co.*, 17 W. R. 1001.

Rule in *e.p. Waring.*

Among merchants it is a common practice for one person to accept or draw bills of exchange to be negotiated by the drawer or acceptor, as the case may be; property belonging to the latter consigned to the former or in the hands of a third person being "appropriated" to meet the bills before they mature. In case of the insolvency of both the drawer and acceptor, as the estate of neither party was entitled to the property appropriated unless the bills had been paid out of its funds, in order to clear both estates, Lord Eldon decided that, in such a case, the holder of the bills had an equity to have the property applied in payment of his claims. *E.p. Waring*, 19 Ves. 345.

This rough and ready mode of solving the difficulties of the case has been followed ever since, and held to apply to all kinds of insolvency. But a winding-up order is not necessarily a proof of insolvency, and, unless the insolvency of the company is shown, the rule in *E.p. Waring* does not apply when one of the parties to a bill of exchange is insolvent and the other is a company in liquidation. *New Zealand Banking Co., e.p. Hickie*, L. R., 4 Eq. 222; 36 L. J., Ch. 809.

Debts bearing interest.

Creditors whose debts bear interest are entitled to dividends only upon what was due for principal and interest at the commencement of the winding-up, and it is only in the event of there being a surplus that they can have any claim for subsequent interest; in which case the dividends will be treated as applicable, first, in payment of interest, and then in reduction of principal. *Humber Iron Works Co., e.p. Warrant Finance Co.* (2), L. R., 4 Ch. 643; 17 W. R. 780.

Creditors who have proceeded against individuals.

Where the shareholders are individually liable, and a creditor has obtained judgment against a shareholder, he may not prove in the winding-up. *King* v. *Hoare*, 13 M. & W. 494; *Re Tyler, e.p. Higgins*, 27 L. J., B. 27; 3 De G. & J. 33. But a colonial judgment creates no merger. *Bank of Australia* v. *Nias*, 16 Q. B. 717. Where, before

25 & 26 Vict. c. 89, s. 159.

General scheme of liquidation may be sanctioned (2).

159. The liquidators may, with the sanction of the court (1), where the company is being wound up by the court or subject to the supervision of the court, and with the sanction of an extraordinary resolution of the company where the company is being wound up altogether voluntarily, pay any classes of

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a judgment was obtained, a shareholder who was being sued procured a winding-up order and stay of proceedings, the creditor suing was allowed to prove in the winding-up. *Wheal Ludcott Mining Co., Geakes's Claim*, 17 W. R. 745.

Statutes of Limitations.

A winding-up order does not prevent time running against a creditor so as to bar him of his remedy. *Royal Bank of Australia, e.p. Forest*, 2 Giff. 42; 29 L. J., Ch. 295.

Carrying a claim which was never adjudicated on, stopped the time running against a creditor. *Warwick and Worcester R. Co.*, 27 L. J., Ch. 737.

An undertaking by an official manager to pay a solicitor's claim on his giving up papers on which he claimed a lien, prevented time running against the claim. *Gloucester and Aberystwith R. Co., Hill's Claim*, 29 L. J., Ch. 383.

Mode of proof.

For mode of proof, see General Order of November, 1862, rules 20—28.

An order to prove *in formâ pauperis* was made *ex parte*. *Irish Land Improvement Society, e.p. Fry*, 1 Dr. & Sm. 318; 9 W. R. 51.

Sanction of the court.

(1) The sanction of the court should be previously given; but where the agent of the liquidator had made a compromise with an agent of the company, who was also a shareholder, in respect of legal proceedings in Australia, the compromise being reasonable, the court acted upon it. *London and Colonial Co., e.p. Clark*, L. R., 7 Eq. 550.

The sanction of the court can be given by the chief clerk, subject to be adjourned into court. *Home Counties Life Assurance Co., e.p. Garstin*, 10 W. R. 457.

The court exercises its discretion itself, and will not delegate its power to the liquidator, and therefore refused a compromise with thirty-five shareholders (the principal shareholders) on data which were not to be divulged beyond the official liquidator. *Northumberland and Durham District Banking Co., e.p. Totty*, 29 L. J., Ch. 702; 1 Dr. & Sm. 273.

"The Liquidation Act, 1868."

(2) In the case of a winding-up where proceedings were pending 31st July, 1868, 31 & 32 Vict. c. 68, provides:—

Power to prepare and file scheme.

5. *Division of assets in specie.*]—If in any case of bankruptcy, arrangement, or winding-up within this act it appears to the liquidators that it will be for the benefit of the estate in liquidation that any part of the assets thereof should be divided in specie, or be otherwise disposed of without sale, they may prepare and file in the Court of Chancery a scheme in that behalf.

Provision in scheme as to secured creditors.

6. A scheme may in any case provide that any class of secured creditors shall take in or towards discharge of their claims on the estate the securities held by them, at a value to be determined by the court or in such manner as the court shall direct.

creditors in full, or make such compromise or other arrangement as the liquidators may deem expedient with creditors or persons claiming to be creditors, or persons having or alleging themselves to have any claim, present or future, certain or contingent, ascertained or sounding only in damages against the company, or whereby the company may be rendered liable.

Power to compromise (2).

160. The liquidators may, with the sanction of the court (1), where the company is being wound up by the court or subject to the supervision of the court, and with the sanction of an

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Notice of scheme.

7. Notice of the filing of the scheme shall be published and given as General Orders under this act direct.

Application for confirmation.

8. At such time after the filing of the scheme as General Orders under this act direct the liquidators may apply to the court in a summary way for confirmation thereof.

Confirmation of scheme by court.

9. After hearing the liquidators, and any creditors or other parties whom the court thinks entitled to be heard on the application, the court, if satisfied that no sufficient objection has been established to the scheme, may confirm the scheme, with or without alteration or addition.

Effect of scheme.

10. The scheme, as and when confirmed by the court, shall be binding and effectual to all intents (any rule of law or equity or course of procedure in any court notwithstanding), and the liquidators and debtor and others affected by the scheme shall conform with the conditions thereof, and accordingly shall (subject to the directions of the court) execute and do all deeds and things necessary or proper for transferring or vesting any portion of the assets of the estate in accordance with the scheme.

A General Order in accordance with sect. 13 of that act was promulgated on the 29th of April, 1869.

(1) See note (1), *ante*, p. 274.

Particular compromises.

(2) A compromise under which the liability of the contributories was limited and the creditors paid 17*s.* in the pound was sanctioned notwithstanding the opposition of some creditors. *Commercial Banking Corp. of India and the East*, 17 W. R. 840.

A compromise under which a claimant for purchase-money took half his claim and alleged contributories were removed from the list was sanctioned. *Risca Coal and Iron Co.*, 31 L. J., Ch. 283; 38 Beav. 528.

A compromise was sanctioned under which the liquidator accepted from all contributories 20*l.*, if paid within two months, instead of 25*l.* spread over two years. *Smith, Knight & Co.*, 16 W. R. 1104.

Under the similar section of the Indian Companies Act, a compromise of claims on a whole class of alleged contributories under which they paid proportionally to their alleged liability was allowed, without inquiry as to the ability of each to pay. *Bank of Hindustan, China and Japan* v. *Eastern Financial Association*, 17 W. R. 554.

Notice.

Notice of an intended compromise ought to be given to the creditors. *Northumberland and Durham District Banking Co., ex p. Totty*, 29 L. J., Ch. 702.

Setting aside compromises.

The court has jurisdiction on application in chambers to set aside

25 & 26 Vict. c. 89, s. 160.

extraordinary resolution (1) of the company where the company is being wound up altogether voluntarily, compromise all calls and liabilities to calls, debts and liabilities capable of resulting in debts, and all claims, whether present or future, certain or contingent, ascertained or sounding only in damages, subsisting or supposed to subsist between the company and any contributory or alleged contributory, or other debtor or person apprehending liability to the company, and all questions in any way relating to or affecting the assets of the company or the winding-up of the company, upon the receipt of such sums, payable at such times, and generally upon such terms as may be agreed upon, with power for the liquidators to take any security for the discharge of such debts or liabilities, and to give complete discharges in respect of all or any such calls, debts or liabilities.

Power for liquidators to accept shares, &c. as a consideration for sale of property of company (2).

161. Where any company is proposed to be or is in the course of being wound up altogether voluntarily, and the whole or a portion of its business or property is proposed to be transferred or sold to another company, the liquidators of the first mentioned company may, with the sanction of a special

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a compromise if improperly obtained as a consequence of its sanction being necessary. *Leeds Banking Co., e.p. Clarke*, 14 W. R. 856; 12 Jur. 780.

A compromise was made under sect. 159. The liquidator took out a summons under sect. 138 to make dissentient shareholders show cause why it should not be carried out. The Lords Justices held the particular compromise ought to be carried out, but that the court had power, notwithstanding that the compromise had been sanctioned by a meeting of shareholders, to prevent it being carried out if improper. *Lama Italian Coal Co.*, L. R., 2 Ch. 692; 36 L. J., Ch. 837.

A compromise was set aside on account of the suppression of material facts in the notice sent round to the shareholders. *Central Darjeeling Tea Co.*, 15 L. T. 234.

In *The Eastern Counties Junction, &c. R. Co., Underwood's Case*, 5 D. M. & G. 677; 23 L. J., Ch. 943, a motion to set aside a compromise was refused partly on the ground of delay.

(1) See General Order of November, 1862, rules 49, 60—62, *post*.

(2) A financial company made an arrangement with a banking company by which it was agreed that the financial company should be wound up voluntarily, and that the banking company should advance money to discharge the liabilities and should receive the proceeds of all the assets of the financial company as realised. That after complete liquidation and payment to the bank by means of the assets (assisted if necessary by calls upon the shareholders in the financial company) of a certain sum over and above all advances, the

resolution of the company by whom they were appointed, conferring either a general authority on the liquidators, or an authority in respect of any particular arrangement, receive in compensation or part compensation for such transfer or sale shares, policies or other like interests in such other company, for the purpose of distribution amongst the members of the company being wound up, or may enter into any other arrangement whereby the members of the company being wound up may, in lieu of receiving cash, shares, policies or other like interests, or in addition thereto, participate in the profits of or receive any other benefit from the purchasing company; and any sale made or arrangement entered into by the liquidators in pursuance of this section shall be binding on the members of the company being wound up; subject to this proviso, that if any member of the company being wound up, who has not voted in favour of the special resolution passed by the company of which he is a member at either of the meetings held for passing the same, expresses his dissent from any such special resolution in writing addressed to the liquidators or one of them, and left at the registered office of the company not later than seven days after the date of the meeting at which such special resolution was passed, such dissentient member may require the liquidators to do one of the following things as the liquidators may prefer, that is to say, either to abstain from carrying such resolution into effect, or to purchase the interest held by such dissentient member at a price to be determined in manner hereinafter mentioned, such purchase-money to be paid before the company is dissolved, and to be raised by the liquidators in such manner as may be determined by special resolution: no special resolution shall be deemed invalid for the purposes of this section by reason that it is passed antecedently to or concurrently with any resolution for winding-up

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shareholders in the financial company were to be at liberty to exchange every three shares (2*l.* paid) for one (5*l.* paid) in the bank. The arrangement could not be supported under sect 161. *Clinch* v. *The Financial Corp.*, 37 L. J., Ch. 281; 38 L. J., Ch. 1; L. R., 3 Eq. 450; 4 Ch. 117. See also *ante*, p. 36.

In order to bring a transfer of business from one company to another within sect. 161, distinct notice ought to be given that it is intended to act under that section. *Imperial Bank of China, India and Japan* v. *Bank of Hindustan, &c.*, L. R., 6 Eq. 91; 16 W. R. 1107.

25 & 26 Vict. c. 89, s. 161.

the company, or for appointing liquidators; but if an order be made within a year for winding-up the company by or subject to the supervision of the court, such resolution shall not be of any validity unless it is sanctioned by the court.

Mode of determining price (1).

162. The price to be paid for the purchase of the interest of any dissentient member may be determined by agreement, but if the parties dispute about the same, such dispute shall be settled by arbitration, and for the purposes of such arbitration the provisions of "The Companies Clauses Consolidation Act, 1845" (2), with respect to the settlement of disputes by arbi-

(1) A provision in the regulations of a company relative to the settlement of disputes between a company and its shareholders is applicable to disputes about the purchase-money of shares of a dissentient member under sect. 161. *De Rosaz* v. *Anglo-Italian Bank*, 38 L. J., Q. B. 161.

(2) With respect to the settlement of disputes by arbitration, it is enacted by 8 & 9 Vict. c. 16, as follows (*a*) :—

128. *Where questions are to be determined by arbitration, arbitrators to be appointed within fourteen days after notice.*]—When any dispute authorized or directed by this or the special act, or any act incorporated therewith, to be settled by arbitration, shall have arisen, then, unless both parties shall concur in the appointment of a single arbitrator, each party, on the request of the other party, shall by writing under his hand nominate and appoint an arbitrator to whom such dispute shall be referred; and after any such appointment shall have been made, neither party shall have power to revoke the same without the consent of the other, nor shall the death of either party operate as such revocation; and if for the space of fourteen days after any such dispute shall have arisen, and after a request in writing shall have been served by the one party on the other party to appoint an arbitrator, such last-mentioned party fail to appoint such arbitrator, then upon such failure the party making the request, and having himself appointed an arbitrator, may appoint such arbitrator to act on behalf of both parties, and such arbitrator may proceed to hear and determine the matters which shall be in dispute; and in such case the award or determination of such single arbitrator shall be final.

129. *Vacancy of arbitrator to be supplied.*]—If before the matters so referred shall be determined any arbitrator appointed by either party die, or become incapable or refuse or for seven days neglect to act as arbitrator, the party by whom such arbitrator was appointed may nominate and appoint in writing some other person to act in his place; and if for the space of seven days after notice in writing from the other party for that purpose he fail to do so, the remaining or other arbitrator may proceed *ex parte;* and every arbitrator so to be substituted as aforesaid shall have the same powers and authorities as were vested in the former arbitrator at the time of such his death, refusal or disability as aforesaid.

(*a*) As to stamps on awards, see 28 & 29 Vict. c. 96, s. 3.

tration, shall be incorporated with this act; and in the construction of such provisions this act shall be deemed to be the

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130. *Appointment of umpire.*]—Where more than one arbitrator shall have been appointed, such arbitrators shall, before they enter upon the matters referred to them, nominate and appoint by writing under their hands an umpire to decide on any such matters on which they shall differ; and if such umpire shall die, or refuse or for seven days neglect to act, they shall forthwith after such death, refusal or neglect, appoint another umpire in his place; and the such decision of every such umpire on the matters so referred to him shall be final.

131. *This section refers only to railway companies* (*a*).

132. *Power of arbitrators to call for books, &c.*]—The said arbitrators or their umpire may call for the production of any documents in the possession or power of either party which they or he may think necessary for determining the question in dispute, and may examine the parties or their witnesses on oath, and administer the oaths necessary for that purpose.

133. *Costs to be in the discretion of the arbitrators.*]—Except where by this or the special act, or any act incorporated therewith, it shall be otherwise provided, the costs of and attending every such arbitra-

(*a*) In the case of companies other than railway companies where the arbitrators neglect to appoint an umpire, a judge had power to do so under "The Common Law Procedure Act, 1854." *Anglo-Italian Bank* v. *De Rosaz*, L. R., 2 Q. B. 452. Section 12 of that act (17 & 18 Vict. c. 125), is as follows:—

On failure of parties or arbitrators, judge may appoint single arbitrator or umpire.]—If in any case of arbitration the document authorizing the reference provide that the reference shall be to a single arbitrator, and all the parties do not, after differences have arisen, concur in the appointment of an arbitrator; or if any appointed arbitrator refuse to act, or become incapable of acting, or die, and the terms of such document do not show that it was intended that such vacancy should not be supplied, and the parties do not concur in appointing a new one; or if, where the parties or two arbitrators are at liberty to appoint an umpire or third arbitrator, such parties or arbitrators do not appoint an umpire or third arbitrator; or if any appointed umpire or third arbitrator refuse to act, or become incapable of acting or die, and the terms of the document authorizing the reference do not show that it was intended that such a vacancy should not be supplied, and the parties or arbitrators respectively do not appoint a new one; then in every such instance any party may serve the remaining parties or the arbitrators, as the case may be, with a written notice to appoint an arbitrator, umpire or third arbitrator respectively; and if within seven clear days after such notice shall have been served no arbitrator, umpire or third arbitrator be appointed, it shall be lawful for any judge of any of the superior courts of law or equity at Westminster, upon summons to be taken out by the party having served such notice as aforesaid, to appoint an arbitrator, umpire or third arbitrator, as the case may be, and such arbitrator, umpire and third arbitrator respectively shall have the like power to act in the reference, and make an award, as if he had been appointed by consent of all parties.

25 & 26 Vict. c. 89, s. 162.

special act, and "the company" shall mean the company that is being wound up, and any appointment by the said incorporated provisions directed to be made under the hand of the secretary, or any two of the directors, may be made under the hand of the liquidator, if only one, or any two or more of the liquidators if more than one.

Certain attachments, sequestrations and executions to be void.

163. Where any company is being wound up by the court or subject to the supervision of the court, any attachment, sequestration, distress or execution put in force against the estate or effects of the company after the commencement of the winding-up shall be void to all intents (1).

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tion, to be determined by the arbitrators, shall be in the discretion of the arbitrators or their umpire, as the case may be.

134. *Submission to arbitration to be made rule of court.*]—The submission to any such arbitration may be made a rule of any of the superior courts, on the application of either of the parties.

(1) A sale of goods in the hands of the sheriff was restrained, the execution creditors being secured priority for the full amount of their debt with interest. *Re The Dublin Exhibition, &c. Co.*, I. R., 2 Eq. 158.

The prohibition contained in sect. 163 does not apply to a distress on premises held in trust for a company. *Re Exhall Mining Co.*, 33 L. J., Ch. 595.

At the time of the presentation of a petition to wind up a company the sheriff was in possession of property of the company under executions issued at the suit of several judgment creditors. The sheriff had been restrained, after the presentation of the petition, from selling the property until the hearing. On making a winding-up order the court ordered the sheriff to deliver up the property to the official liquidator to be sold in the winding-up, reserving to the creditors the same priority against the property as if it had been sold by the sheriff. *Re Plas-yn-Mhowys Coal Co.*, L. R., 4 Eq. 689.

In re Barstow, &c. Co., L. R., 4 Eq. 681; 36 L. J., Ch. 899, the court refused to grant an injunction to stay proceedings under an execution, but put the creditors upon terms in regard to the description of property to be taken.

Where a writ would have been executed but for resistance to the sheriff's officer, the court, in the exercise of its discretion, dissolved an injunction which had been obtained on motion *ex parte* by the petitioning creditor immediately after the presentation of the petition. *Re London Cotton Co.*, L. R., 2 Eq. 53; 35 L. J., Ch. 425.

An action was brought by the liquidator of a company, being wound up under the supervision of the court, for a call; the action failed. Execution for the costs of the defendant was not restrained. *Bank of Hindustan, China and Japan, e.p. Levick*, L. R., 5 Eq. 69. *E.p. Smith*, L. R., 3 Ch. 125; 37 L. J., Ch. 185, in the same company, was a similar case.

H. recovered judgment against a company, and afterwards obtained a garnishee order against S., an alleged debtor of the company. H.

Fraudulent preference.

164. Any such conveyance, mortgage, delivery of goods, payment, execution or other act relating to property as would, if made or done by or against any individual trader, be deemed in the event of his bankruptcy to have been made or done by way of undue or fraudulent preference of the creditors of such trader, shall, if made or done by or against any company, be deemed, in the event of such company being wound up under this act, to have been made or done by way of undue or fraudulent preference of the creditors of such company, and shall be invalid accordingly; and for the purposes of this section the presentation of a petition for winding-up a company shall in the case of a company being wound up by the court or subject to the supervision of the court, and a resolution for winding-up the company shall, in the case of a voluntary winding-up, be deemed to correspond with the act of bankruptcy in the case of an individual trader; and any conveyance or assignment made by any company formed under this act of all its estate and effects to trustees for the benefit of all its creditors shall be void to all intents.

Power of court to assess damages against delinquent directors and officers (1).

165. Where, in the course of the winding-up of any company under this act, it appears that any past or present director, manager, official or other liquidator, or any officer of such company, has misapplied or retained in his own hands or

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then, by leave, brought an action against S., and pending the proceedings the company was ordered to be wound up. A motion by the liquidator for an injunction to restrain the proceedings at law was refused; but it was ordered that, in case H. should recover a verdict, he should not put in force any execution against the property of the company in the hands of S. *Re United English and Scotch Life Insurance Co.*, L. R., 5 Eq. 300.

See further, sects. 85, 87, 138, *ante*, pp. 225, 226, 260; sects. 197, 198, 201, 202, *post*, p. 302.

(1) L. J. Turner thought sect. 165 did not apply to a voluntary winding-up. *Bank of Gibraltar and Malta*, L. R., 1 Ch. 69; 35 L. J., Ch. 49.

The executors of deceased directors cannot be made to account under this section. V. C. Kindersley doubted whether, if the acts complained of were the acts of a body of persons, some of whom were dead, the court could proceed against the survivors under this section. *East of England Banking Co., Felton's Executors' Case*, L. R., 1 Eq. 219; 35 L. J., Ch. 196.

This section is not applicable to complicated cases. *Royal Hotel*

25 & 26 Vict. c. 89, s. 165.

become liable or accountable for any monies of the company, or been guilty of any misfeasance or breach of trust in relation to the company, the court may, on the application of any liquidator, or of any creditor or contributory of the company, notwithstanding that the offence is one for which the offender is criminally responsible (1), examine into the conduct of such director, manager or other officer, and compel him to repay any monies so misapplied or retained, or for which he has become liable or accountable, together with interest after such rate as the court thinks just, or to contribute such sums of money to the assets of the company by way of compensation in respect of such misapplication, retainer, misfeasance or breach of trust, as the court thinks just.

Penalty on falsification of books.

166. If any director, officer or contributory of any company wound up under this act destroys, mutilates, alters or falsifies any books, papers, writings, or securities, or makes or is privy to the making of any false or fraudulent entry in any register, book of account or other document belonging to the company, with intent to defraud or deceive any person, every person so offending shall be deemed to be guilty of a misdemeanor, and upon being convicted shall be liable to imprisonment for any term not exceeding two years, with or without hard labour.

Prosecution of delinquent directors in the case of winding-up by court.

167. Where any order is made for winding-up a company by the court or subject to the supervision of the court, if it appear in the course of such winding-up that any past or present director, manager, officer or member of such company has been guilty of any offence in relation to the company for which he is criminally responsible, the court may, on the application of any person interested in such winding-up, or of its own motion, direct the official liquidators, or the liquidators, (as the case may be,) to institute and conduct a prosecution or prose-

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Co. of Great Yarmouth, L. R., 4 Eq. 244; *Brighton Brewery Co., Hunt's Case*, 37 L. J., Ch. 278. In the latter case a summary order was made for repayment of promotion money and fees.

Dividends improperly declared may be ordered to be paid by the directors under this section. *Mercantile Trading Co., Sturge's Case*, L. R., 4 Ch. 475; 17 W. R. 694.

(1) See *ante*, p. 106.

cutions for such offence, and may order the costs and expenses to be paid out of the assets of the company (1).

Prosecution of delinquent directors, &c. in case of voluntary winding-up.

168. Where a company is being wound up altogether voluntarily, if it appear to the liquidators conducting such winding-up that any past or present director, manager, officer or member of such company has been guilty of any offence in relation to the company for which he is criminally responsible, it shall be lawful for the liquidators, with the previous sanction of the court, to prosecute such offender, and all expenses properly incurred by them in such prosecution shall be payable out of the assets of the company in priority to all other liabilities (2).

Penalty of perjury.

169. If any person, upon any examination upon oath or affirmation authorized under this act, or in any affidavit, deposition or solemn affirmation in or about the winding-up of any company under this act, or otherwise in or about any matter arising under this act, wilfully and corruptly gives false evidence, he shall, upon conviction, be liable to the penalties of wilful perjury.

Power of Courts to make Rules.

Power of lord chancellor of Great Britain to make rules (3).

170. In England the lord chancellor of Great Britain, with the advice and consent of the master of the rolls and any one of the vice-chancellors for the time being, or with the advice and consent of any two of the vice-chancellors, may, as often as circumstances require, make such rules concerning the mode of proceeding to be had for winding-up a company in the court of chancery as may from time to time seem necessary, but until such rules are made the general practice of the court of chancery, including the practice hitherto in use in winding-up companies, shall, so far as the same is applicable and not inconsistent with this act, apply to all proceedings for winding-up a company.

Power of court of session in Scotland to make rules.

171. In Scotland the court of session may make such rules concerning the mode of winding-up as may be necessary by act of sederunt; but, until such rules are made, the general prac-

(1) Every application under this section shall be by petition. General Order of November, 1862, rule 51.

(2) See *ante*, p. 106.

(3) See General Order of November, 1862, *post*.

25 & 26 Vict. c. 89, s. 171.

tice of the court of session in suits pending in such court shall, so far as the same is applicable, and not inconsistent with this act, apply to all proceedings for winding-up a company, and official liquidators shall in all respects be considered as possessing the same powers as any trustee on a bankrupt estate.

Power to make rules in stannaries court (1).

172. The vice-warden of the stannaries may from time to time, with the consent provided for by section twenty-three of the act of eighteenth of Victoria, chapter thirty-two, make rules for carrying into effect the powers conferred by this act upon the court of the vice-warden, but, subject to such rules, the general practice of the said court and of the registrar's office in the said court, including the present practice of the said court in winding-up companies, may be applied to all proceedings under this act; the said vice-warden may likewise, with the same consent, make from time to time rules for specifying the fees to be taken in his said court in proceedings under this act; and any rules so made shall be of the same force as if they had been enacted in the body of this act; and the fees paid in respect of proceeding taken under this act, including fees taken under "The Joint Stock Companies Act, 1856," in the matter of winding-up companies, shall be applied exclusively towards payment of such additional officers, or such increase of the salaries of existing officers, or pensions to retired officers, or such other needful expenses of the court as the lord warden of the stannaries shall from time to time, on the application of the vice-warden or otherwise, think fit to direct, sanction or assign, and meanwhile shall be kept as a separate fund apart from the ordinary fees of the court arising from other business, to await such direction and order of the lord warden herein, and to accumulate by investment in government securities until the whole shall have been so appropriated.

Power of lord chancellor of Ireland to make rules.

173. In Ireland the lord chancellor of Ireland may, as respects the winding-up of companies in Ireland, with the advice and consent of the master of the rolls in Ireland, exercise the same power of making rules as is by this act hereinbefore given to the lord chancellor of Great Britain; but until such rules are made the general practice of the court of chancery in Ireland,

(1) Rules were made in accordance with this section in November, 1862.

including the practice hitherto in use in Ireland in winding-up companies, shall, so far as the same is applicable and not inconsistent with this act, apply to all proceedings for winding-up a company.

PART V.

REGISTRATION OFFICE.

Constitution of registration office.

174. The registration of companies under this act shall be conducted as follows, (that is to say,)

(1.) The board of trade may from time to time appoint such registrars, assistant registrars, clerks and servants as they may think necessary for the registration of companies under this act, and remove them at pleasure (1);

(2.) The board of trade may make such regulations as they think fit with respect to the duties to be performed by any such registrars, assistant registrars, clerks and servants as aforesaid;

(3.) The board of trade may from time to time determine the places at which offices for the registration of companies are to be established, so that there be at all times maintained in each of the three parts of the United Kingdom at least one such office, and that no company shall be registered except at an office within that part of the United Kingdom in which by the memorandum of association the registered office of the company is declared to be established; and the board may require that the registrar's office of the court of the vice-warden of the stannaries shall be one of the offices for the registration of companies formed for working mines within the jurisdiction of the court;

(4.) The board of trade may from time to time direct a seal or seals to be prepared for the authentication of any documents required for or connected with the registration of companies;

(1) The duties of a registrar are enforceable by writ of mandamus. *Reg.* v. *Registrar of Joint Stock Companies*, 10 Q. B. 839; *Reg.* v. *Whitmarsh*, 15 Q. B. 600; 19 L. J., Q. B. 185. 469.

25 & 26 Vict. c. 89, s. 174.

(5.) Every person may inspect the documents kept by the registrar of joint stock companies; and there shall be paid for such inspection such fees as may be appointed by the board of trade, not exceeding one shilling for each inspection; and any person may require a certificate of the incorporation of any company, or a copy or extract of any other document or any part of any other document, to be certified by the registrar; and there shall be paid for such certificate of incorporation, certified copy or extract such fees as the board of trade may appoint, not exceeding five shillings for the certificate of incorporation, and not exceeding sixpence for each folio of such copy or extract, or in Scotland for each sheet of two hundred words;

(6.) The existing registrar, assistant registrars, clerks and other officers and servants in the office for the registration of joint stock companies shall, during the pleasure of the board of trade, hold the offices and receive the salaries hitherto held and received by them, but they shall in the execution of their duties conform to any regulations that may be issued by the board of trade;

(7.) There shall be paid to any registrar, assistant registrar, clerk or servant that may hereafter be employed in the registration of joint stock companies such salary as the board of trade may, with the sanction of the commissioners of the treasury, direct;

(8.) Whenever any act is herein directed to be done to or by the registrar of joint stock companies, such act shall, until the board of trade otherwise directs, be done in England to or by the existing registrar of joint stock companies, or in his absence to or by such person as the board of trade may for the time being authorize; in Scotland to or by the existing registrar of joint stock companies in Scotland; and in Ireland to or by the existing assistant registrar of joint stock companies for Ireland, or by such person as the board of trade may for the time being authorize in Scotland or Ireland in the absence of the registrar; but in the event of the board of trade altering the constitution

of the existing registry office, such act shall be done to or by such officer or officers and at such place or places with reference to the local situation of the registered offices of the companies to be registered as the board of trade may appoint.

PART VI.

APPLICATION OF ACT TO COMPANIES REGISTERED UNDER JOINT STOCK COMPANIES ACTS.

Definition of joint stock companies acts. 19 & 20 Vict. c. 47. 20 & 21 Vict. c. 14. 20 & 21 Vict. c. 49. 21 & 22 Vict. c. 91.

175. The expression "Joint Stock Companies Acts" as used in this act shall mean "The Joint Stock Companies Act, 1856," "The Joint Stock Companies Acts, 1856, 1857," "The Joint Stock Banking Companies Act, 1857," and "The Act to enable Joint Stock Banking Companies to be formed on the Principle of Limited Liability," or any one or more of such acts, as the case may require; but shall not include the act passed in the eighth year of the reign of her present Majesty, chapter one hundred and ten, and intituled "An Act for the Registration, Incorporation and Regulation of Joint Stock Companies."

Application of act to companies formed under joint stock companies acts.

176. Subject as hereinafter mentioned, this act, with the exception of Table (A) in the first schedule, shall apply to companies formed and registered under the said Joint Stock Companies Acts, or any of them, in the same manner in the case of a limited company as if such company had been formed and registered under this act as a company limited by shares, and in the case of a company other than a limited company as if such company had been formed and registered as an unlimited company under this act, with this qualification, that wherever reference is made expressly or impliedly to the date of registration, such date shall be deemed to refer to the date at which such companies were respectively registered under the said Joint Stock Companies Acts or any of them, and the power of altering regulations by special resolution given by this act shall, in the case of any company formed and registered under the said Joint Stock Companies Acts or any of them, extend to altering any provisions contained in the Table marked (B)

25 & 26 Vict. c. 89, s. 176.

annexed to "The Joint Stock Companies Act, 1856," and shall also in the case of an unlimited company formed and registered as last aforesaid extend to altering any regulations relating to the amount of capital or its distribution into shares, notwithstanding such regulations are contained in the memorandum of association.

Application of act to companies registered under joint stock companies acts.

177. This act shall apply to companies registered but not formed under the said Joint Stock Companies Acts or any of them in the same manner as it is hereinafter declared to apply to companies registered but not formed under this act, with this qualification, that wherever reference is made expressly or impliedly to the date of registration, such date shall be deemed to refer to the date at which such companies were respectively registered under the said Joint Stock Companies Acts or any of them.

Mode of transferring shares.

178. Any company registered under the said Joint Stock Companies Acts or any of them may cause its shares to be transferred in manner hitherto in use, or in such other manner as the company may direct.

Part VII.

COMPANIES AUTHORIZED TO REGISTER UNDER THIS ACT.

Regulations as to registration of existing companies.

179. The following regulations shall be observed with respect to the registration of companies under this part of this act, (that is to say,)

(1.) No company having the liability of its members limited by act of parliament or letters patent, and not being a joint stock company as hereinafter defined, shall register under this act in pursuance of this part thereof;

(2.) No company having the liability of its members limited by act of parliament or by letters patent shall register under this act in pursuance of this part thereof as an unlimited company, or as a company limited by guarantee;

(3.) No company that is not a joint stock company as hereinafter defined shall in pursuance of this part of this

act register under this act as a company limited by shares;

(4.) No company shall register under this act in pursuance of this part thereof unless an assent to its so registering is given by a majority of such of its members as may be present, personally or by proxy, in cases where proxies are allowed by the regulations of the company, at some general meeting summoned for the purpose;

(5.) Where a company not having the liability of its members limited by act of parliament or letters patent is about to register as a limited company, the majority required to assent as aforesaid shall consist of not less than three-fourths of the members present, personally or by proxy, at such last-mentioned general meeting;

(6.) Where a company is about to register as a company limited by guarantee the assent to its being so registered shall be accompanied by a resolution declaring that each member undertakes to contribute to the assets of the company, in the event of the same being wound up, during the time that he is a member, or within one year afterwards, for payment of the debts and liabilities of the company contracted before the time at which he ceased to be a member, and of the costs, charges and expenses of winding-up the company, and for the adjustment of the rights of the contributories amongst themselves, such amount as may be required, not exceeding a specified amount:

In computing any majority under this section when a poll is demanded regard shall be had to the number of votes to which each member is entitled according to the regulations of the company of which he is a member.

Companies capable of being registered.

180. With the above exceptions, and subject to the foregoing regulations, every company existing (1) at the time of the com-

(1) Under sect. 6 of the Banking Companies Act, 1857, L. J. Turner thought that a bank that had stopped payment before registration could register. L. J. Knight Bruce thought otherwise. *Northumberland and Durham District Banking Co.*, 2 De G. & J. 357 ; 27 L. J., Ch. 356. The latter seems the better opinion. *Liverpool Borough Bank* v. *Mellor*, 3 H. & N. 551 ; 28 L. J., Ex. 78. Existing companies.

25 & 26 Vict. c. 89 s. 180.

mencement of this act, including any company registered under the said Joint Stock Companies Acts, consisting of seven or more members, and any company hereafter formed in pursuance of any act of parliament other than this act, or of letters patent, or being a company engaged in working mines within and subject to the jurisdiction of the stannaries, or being otherwise duly constituted by law, and consisting of seven or more members, may at any time hereafter register itself under this act as an unlimited company, or a company limited by shares, or a company limited by guarantee: and no such registration shall be invalid by reason that it has taken place with a view to the company being wound up.

Definition of joint stock company.

181. For the purposes of this part of this act, so far as the same relates to the description of companies empowered to register as companies limited by shares, a joint stock company shall be deemed to be a company having a permanent paid up or nominal capital of fixed amount, divided into shares, also of fixed amount, or held and transferable as stock, or divided and held partly in one way and partly in the other, and formed on the principle of having for its members the holders of shares in such capital, or the holders of such stock, and no other persons; and such company when registered with limited liability under this act shall be deemed to be a company limited by shares (1).

Proviso as to banking company.

182. No banking company claiming to issue notes in the United Kingdom shall be entitled to limited liability in respect of such issue, but shall continue subject to unlimited liability in respect thereof, and, if necessary, the assets shall be marshalled for the benefit of the general creditors, and the members shall be liable for the whole amount of the issue, in addition to the sum for which they would be liable, as members of a limited company (2).

Requisitions for registration by companies.

183. Previously to the registration in pursuance of this part of this act of any joint stock company there shall be delivered to the registrar the following documents, (that is to say,)

(1.) A list showing the names, addresses and occupations of all persons who on a day named in such list, and not being more than six clear days before the day of re-

(1) See sect. 8, *ante*, p. 181.
(2) See sect. 188, *post*, p. 292.

gistration, were members of such company, with the addition of the shares held by such persons respectively, distinguishing, in cases where such shares are numbered, each share by its number;

(2.) A copy of any act of parliament, royal charter, letters patent, deed of settlement, contract of copartnery, cost-book regulations or other instrument constituting or regulating the company;

(3.) If any such joint stock company is intended to be registered as a limited company, the above list and copy shall be accompanied by a statement specifying the following particulars, (that is to say,)

The nominal capital of the company and the number of shares into which it is divided;

The number of shares taken and the amount paid on each share;

The name of the company, with the addition of the word "limited" as the last word thereof;

With the addition, in the case of a company intended to be registered as a company limited by guarantee, of the resolution declaring the amount of the guarantee.

Requisitions for registration by existing company not being a joint stock company.

184. Previously to the registration in pursuance of this part of this act of any company not being a joint stock company there shall be delivered to the registrar a list showing the names, addresses, and occupations of the directors or other managers (if any) of the company, also a copy of any act of parliament, letters patent, deed of settlement, contract of copartnery, cost-book regulations or other instrument constituting or regulating the company, with the addition, in the case of a company intended to be registered as a company limited by guarantee, of the resolution declaring the amount of guarantee.

Power for existing company to register amount of stock instead of shares.

185. Where a joint stock company authorized to register under this act has had the whole or any portion of its capital converted into stock, such company shall, as to the capital so converted, instead of delivering to the registrar a statement of shares, deliver to the registrar a statement of the amount of stock belonging to the company, and the names of the persons who were holders of such stock, on some day to be named in

25 & 26 Vict. c. 89, s. 185.

the statement, not more than six clear days before the day of registration.

Authentication of statements of existing companies.

186. The lists of members and directors and any other particulars relating to the company hereby required to be delivered to the registrar shall be verified by a declaration of the directors of the company delivering the same, or any two of them, or of any two other principal officers of the company, made in pursuance of the act passed in the sixth year of the reign of his late majesty King William the Fourth, chapter sixty-two.

Registrar may require evidence as to nature of company.

187. The registrar may require such evidence as he thinks necessary for the purpose of satisfying himself whether an existing company is or not a joint stock company as hereinbefore defined.

On registration of banking company with limited liability, notice to be given to customers.

188. Every banking company existing at the date of the passing of this act which registers itself as a limited company shall, at least thirty days previous to obtaining a certificate of registration with limited liability, give notice that it is intended so to register the same to every person and partnership firm who have a banking account with the company, and such notice shall be given either by delivering the same to such person or firm, or leaving the same or putting the same into the post addressed to him or them at such address as shall have been last communicated or otherwise become known as his or their address to or by the company; and in case the company omits to give any such notice as is hereinbefore required to be given, then as between the company and the person or persons only who are for the time being interested in the account in respect of which such notice ought to have been given, and so far as respects such account and all variations thereof down to the time at which such notice shall be given, but not further or otherwise, the certificate of registration with limited liability shall have no operation.

Exemption of certain companies from payment of fees.

189. No fees shall be charged in respect of the registration in pursuance of this part of this act of any company in cases where such company is not registered as a limited company, or where previously to its being registered as a limited company the liability of the shareholders was limited by some other act of parliament or by letters patent.

Power to company to change name.

190. Any company authorized by this part of this act to register with limited liability shall, for the purpose of obtaining

registration with limited liability, change its name, by adding thereto the word "limited."

Certificate of registration of existing companies.

191. Upon compliance with the requisitions in this part of this act contained with respect to registration, and on payment of such fees, if any, as are payable under the tables marked (B) and (C) in the first schedule hereto, the registrar shall certify under his hand that the company so applying for registration is incorporated as a company under this act, and, in the case of a limited company, that it is limited, and thereupon such company shall be incorporated, and shall have perpetual succession and a common seal, with power to hold lands; and any banking company in Scotland so incorporated shall be deemed and taken to be a bank incorporated, constituted or established by or under act of parliament.

Certificate to be evidence of compliance with act (1).

192. A certificate of incorporation given at any time to any company registered in pursuance of this part of this act shall be conclusive evidence that all the requisitions herein contained in respect of registration under this act have been complied with, and that the company is authorized to be registered under this act as a limited or unlimited company, as the case may be, and the date of incorporation mentioned in such certificate shall be deemed to be the date at which the company is incorporated under this act.

Transfer of property to company.

193. All such property, real and personal, including all interests and rights in, to and out of property, real and personal, and including obligations and things in action, as may belong to or be vested in the company at the date of its registration under this act, shall on registration pass to and vest in the company as incorporated under this act for all the estate and interest of the company therein.

Registration under this act not to affect obligations incurred previously (2).

194. The registration in pursuance of this part of this act of any company shall not affect or prejudice the liability of such company to have enforced against it, or its right to enforce, any debt or obligation incurred, or any contract entered into, by, to, with or on behalf of such company previously to such registration.

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(1) See sect. 18, *ante*, p. 186.

(2) A company of unlimited liability was registered under 7 & 8 Vict. c. 110; it was afterwards registered as a limited company under 19 & 20 Vict. c. 47, and was afterwards ordered to be wound up in

25 & 26 Vict. c. 89, s. 195.

Continuation of existing actions and suits.

195. All such actions, suits and other legal proceedings as may at the time of the registration of any company registered in pursuance of this part of this act have been commenced by or against such company, or the public officer or any member thereof, may be continued in the same manner as if such registration had not taken place; nevertheless, execution shall not issue against the effects of any individual member of such company upon any judgment, decree or order obtained in any action, suit or proceeding so commenced as aforesaid; but in the event of the property and effects of the company being insufficient to satisfy such judgment, decree or order, an order may be obtained for winding-up the company.

Effect of registration under act.

196. When a company is registered under this act in pursuance of this part thereof, all provisions contained in any act of parliament, deed of settlement, contract of copartnery, cost-book regulations, letters patent or other instrument constituting or regulating the company, including, in the case of a company registered as a company limited by guarantee, the resolution declaring the amount of the guarantee, shall be deemed to be conditions and regulations of the company, in the same manner and with the same incidents as if they were contained in a registered memorandum of association and articles of association; and all the provisions of this act shall apply to such company and the members, contributories and creditors thereof, in the same manner in all respects as if it had been formed under this act, subject to the provisions following, (that is to say,)

(1.) That table (A) in the first schedule to this act shall not, unless adopted by special resolution, apply to any

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the Court of Bankruptcy. It was held that a call could be made upon the shareholders at the time of re-registration to discharge debts of the company then due whenever they accrued. *Liverpool Tradesmen's Loan Co., e.p. Stevenson*, 32 L. J., Ch. 96.

But old members, though liable to creditors, cannot be put on the list of contributories in the winding-up of the registered company. *Lanyon* v. *Smith*, 32 L. J., Q. B. 214; 2 N. R. 118; *Harvey* v. *Clough*, 2 N. R. 204; *Sheffield, &c. Foresters' Society, Fountain's Case*, 34 L. J., Ch. 593; *Welsh Potosi Mining Co., e.p. Lofthouse*, 27 L. J., B. 1; 2 De G. & J. 69. In the latter case the company was being wound up in bankruptcy under the Act of 1856. It was afterwards wound up in chancery under the Act of 1848 as to the old liabilities. *Welsh Potosi Mining Co.*, 27 L. J., Ch. 311.

company registered under this act in pursuance of this part thereof;

(2.) That the provisions of this act relating to the numbering of shares shall not apply to any joint stock company whose shares are not numbered;

(3.) That no company shall have power to alter any provision contained in any act of parliament relating to the company;

(4.) That no company shall have power, without the sanction of the board of trade, to alter any provision contained in any letters patent relating to the company;

(5.) That in the event of the company being wound up, every person shall be a contributory, in respect of the debts and liabilities of the company contracted prior to registration, who is liable, at law or in equity, to pay or contribute to the payment of any debt or liability of the company contracted prior to registration, or to pay or contribute to the payment of any sum for the adjustment of the rights of the members amongst themselves in respect of any such debt or liability; or to pay or contribute to the payment of the costs, charges and expenses of winding-up the company, so far as relates to such debts or liabilities as aforesaid; and every such contributory shall be liable to contribute to the assets of the company, in the course of the winding-up, all sums due from him in respect of any liability as aforesaid; and in the event of the death, bankruptcy or insolvency of any such contributory as last aforesaid, or marriage of any such contributory being a female, the provisions hereinbefore contained with respect to the representatives, heirs and devisees of deceased contributories, and with reference to the assignees of bankrupt or insolvent contributories, and to the husbands of married contributories, shall apply;

(6.) That nothing herein contained shall authorize any company to alter any such provisions contained in any deed of settlement, contract of copartnery, cost-book regulations, letters patent or other instrument constituting or regulating the company, as would, if such

25 & 26 Vict. c. 89, s. 196.

company had originally been formed under this act, have been contained in the memorandum of association, and are not authorized to be altered by this act: But nothing herein contained shall derogate from any power of altering its constitution or regulations which may be vested in any company registering under this act in pursuance of this part thereof by virtue of any act of parliament, deed of settlement, contract of copartnery, letters patent or other instrument constituting or regulating the company.

Power of court to restrain further proceedings.

197. The court may, at any time after the presentation of a petition for winding-up a company registered in pursuance of this part of this act, and before making an order for winding-up the company, upon the application by motion of any creditor of the company, restrain further proceedings in any action, suit or legal proceeding against any contributory of the company as well as against the company as hereinbefore provided, upon such terms as the court thinks fit (1).

Foreign companies.

(1) When a foreign company has a branch in England, an order may be made to wind it up as far as the English business is concerned. *Union Bank of Calcutta, e.p. Watson*, 3 De G. & Sm. 253; *Madrid and Valentia R. Co., e.p. James*, 2 M. & G. 169; 19 L. J., Ch. 260; *Commercial Bank of India*, L. R., 6 Eq. 517; *Dendre Valley R. and Canal Co., e.p. Moss*, 14 Jur. 754.

Industrial and provident societies (*a*).

It was thought by the Master of the Rolls that a society registered under the Industrial and Provident Societies Act, 1852, which was then repealed by the Act of 1862, could not be wound up under this section. The Lord Chancellor concurred in that opinion extra-judicially. *Sheffield, &c. Foresters' Society, Fountain's Case*, 34 L. J., Ch. 593.

In re The Chatham Co-operative Industrial Society, 33 L. J., Ch. 737, V. C. Wood discharged an order to wind up a company which had been registered under the Industrial and Provident Societies Act, 1852. The company had not been registered under the Act of 1862 at the time the winding-up order was made. It had since been registered under that act and a winding-up order made in the county court. The ground of the decision was, that the court had not jurisdiction to make the order, which was discharged.

In *The Rotherhithe, &c. Industrial Society*, 33 L. J., Ch. 520, the Master of the Rolls refused to order a society registered under the Industrial and Provident Societies Act, 1852, to be wound up.

However, in *Midland Counties Benefit Building Society*, 33 L. J., Ch. 739, L. J. Knight Bruce thought that, if the company might have been registered under the Industrial and Provident Societies Act, 1862, and wound up in the county court under the 17th section

(*a*) See 25 & 26 Vict. c. 87, s. 17, *post*.

198. Where an order has been made for winding-up a company registered in pursuance of this part of the act, in addition to the provisions hereinbefore contained, it is hereby further provided that no suit, action or other legal proceeding shall be commenced or proceeded with against any contributory of the company in respect of any debt of the company, except with the leave of the court, and subject to such terms as the court may impose (1). Order for winding-up company.

PART VIII.

APPLICATION OF ACT TO UNREGISTERED COMPANIES (2).

199. Subject as hereinafter mentioned, any partnership, association or company, except railway companies incorporated Winding-up of unregistered companies.

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of that act, the Court of Chancery had concurrent jurisdiction. L. J. Turner expressed no opinion on that point.

Compare *Alfreton District Friendly and Provident Society*, 11 W. R. 300.

As instances of abortive railway companies that have been ordered to be wound up, see *Eastern Counties Junction R. Co., Underwood's Case*, 5 D. M. & G. 677; *Direct Exeter R. Co., e.p. Besley*, 2 M. & G. 776; 19 L. J., Ch. 362; *Great Western, Southern and Eastern Counties R. Co., e. p. Holinsworth*, 3 De G. & Sm. 7; *London and Manchester Direct R. Co., e.p. Barber*, 1 M. & G. 179; 18 L. J., Ch. 242. Railway companies.

Of canal companies formed by private act of parliament. *Wey and Arun Canal Co.*, L. R., 4 Eq. 197; 36 L. J., Ch. 509; *Basingstoke Canal Co.*, 14 W. R. 956. Companies formed by statute.

Of a ferry company. *Isle of Wight Ferry Co.*, 2 H. & M. 597.

A private club could not be wound up under the Acts of 1848 and 1849. *St. James's Club*, 2 D. M. & G. 383; overruling *S. C.*, 20 L. J., Ch. 630. Clubs.

A marine insurance club was ordered to be wound up. *London Marine Insurance Association*, L. R., 8 Eq. 176. A company registered under the Act of 1844. *Bowes* v. *Hope Mutual and Assurance Association*, 35 L. J., Ch. 574. Other associations.

Under the older winding-up acts a friendly and provident society which had ceased for many years to carry on business (*Alfreton District Friendly and Provident Society*, 11 W. R. 300), a loan society (*Sherwood Loan Society, e.p. Smith*, 20 L. J., Ch. 177; 1 Sim., N. S. 265), and a benefit building society (*St. George's Benefit Building Society*, 4 Drew. 154), have been wound up.

(1) See sects. 85, 87, 138, 163, *ante*, pp. 226, 228, 260, 280, and sects. 197, 198, 201, 202, pp. 296, 297, 302.

(2) Other remedies of the shareholders are not taken away by this part of the act *Abraham* v. *Hannay*, 10 Sim. 581; *Walworth* v. *Holt*, 4 My. & C. 619; *Jones* v. *Charlemont*, 16 Sim. 271; *Clement* v. *Bowes*, 17 Sim. 161. Other remedies.

25 & 26 Vict. c. 89, s. 199.

by act of parliament (1), consisting of more than seven members (2), and not registered under this act, and hereinafter included under the term unregistered company, may be wound up under this act, and all the provisions of this act with respect to winding-up shall apply to such company, with the following exceptions and additions:

(1.) An unregistered company shall, for the purpose of determining the court having jurisdiction in the matter of the winding-up, be deemed to be registered in that part of the United Kingdom where its principal place of business is situate; or, if it has a principal place of business situate in more than one part of the United Kingdom, then in each part of the United Kingdom where it has a principal place of business; moreover the principal place of business of an unregistered company, or (where it has a principal place of business situate in more than one part of the United Kingdom) such one of its principal places of business as is situate in that part of the United Kingdom in which proceedings are being instituted, shall for all the purposes of the winding-up of such company be deemed to be the registered office of the company;

(2.) No unregistered company shall be wound up under this act voluntarily or subject to the supervision of the court (3);

(3.) The circumstances under which an unregistered company may be wound up are as follows; (that is to say,) (4)

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(1) See the Abandonment of Railways Act, 1850 (13 & 14 Vict. c. 83), and the Railway Companies Act, 1867 (30 & 31 Vict. c. 127), s. 31.

(2) Under the Act of 1856 the number was "not less than seven." The court refused to discharge a winding-up order which had been made under that act because there were only seven contributories, of whom one was out of the jurisdiction, and could not be brought before the court. *Direct Exeter R. Co., e.p. Woolmer*, 5 De G. & Sm. 117.

But other ways of settling the affairs of small companies are preferable. See *ante*, p. 219.

Partners had assigned their business to trustees to be carried on for the benefit of their creditors. The affairs could not be wound up under the Acts of 1848, 1849. *Stanton Iron Co.*, 25 L. J., Ch. 142; 21 Beav. 164.

(3) Except friendly and provident societies. See 25 & 26 Vict. c. 87, s. 17, *post*.

(4) Compare sect. 78, *ante*, p. 219.

(*a*) Whenever the company is dissolved, or has ceased to carry on business, or is carrying on business only for the purpose of winding-up its affairs (1);

(*b*) Whenever the company is unable to pay its debts;

(*c*) Whenever the court is of opinion that it is just and equitable that the company should be wound up (2):

(4.) An unregistered company shall, for the purposes of this act, be deemed to be unable to pay its debts (3),—

(*a*) Whenever a creditor to whom the company is indebted,

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(1) An insurance company had made over its business to another company. There remained 4,000*l.* to be distributed. It was ordered to be wound up. *London and Westminster Insurance Co., e.p. Phillips*, 3 De G. & Sm. 3. Order to wind up dissolved company made.

A suit had been instituted to settle the accounts of a dissolved company, and a reference had been made to the master to take the accounts. An order was made to wind it up, and it was referred to the same master. *Warwick and Worcester R. Co.*, 13 Jur. 651.

A company registered under the Act of 1856 could be wound up with respect to those debts separately. *Welsh Potosi Mining Co.*, 27 L. J., Ch. 311, *ante*, p. 294.

A person who had made a deposit on account of shares, applied for in a company which proved abortive, received a final dividend; he was not allowed to open accounts by means of a winding-up order. *London and South Essex R. Co., e.p. Murrell*, 3 De G. & Sm. 4; 18 L. J., Ch. 260. Order refused.

A projected company had been abandoned, and the scheme sold to another company. A petition to wind up the former company alleged there was 10,000*l.* due from the latter company to the former. The petition was dismissed without prejudice to any suit to recover that sum. *London, Newbury, &c. R. Co., e.p. Cookson*, 15 Jur. 615.

Where all debts were paid, and there were no assets except what could be obtained from making the directors account, a winding-up order was refused. *Great Munster R. Co., e.p. Inderwick*, 3 De G. & Sm. 231.

The court refused to make an order to wind up a company where its affairs were being settled in another and better way. *Chester and Manchester Direct R. Co., e.p. Phillips*, 1 Sim., N. S. 605.

Where the contributories were endeavouring to make arrangements with their creditors, a petition was ordered to stand over. *Monmouthshire and Glamorganshire Banking Co.*, 15 Beav. 74.

(2) A shareholder in a cost-book mining company, who was being sued for a debt of the company, was entitled to a winding-up order. *Wheale Anne Mining Co.*, 30 Beav. 601. Just and equitable.

But a shareholder being sued, who had not paid calls amounting to more than the debt for which he was sued, was not entitled to a winding-up order. *Birch, Torr and Vitifer Co., e.p. Lawton*, 1 K. & J. 204.

Compare sect. 79 (5), *ante*, p. 220.

(3) Compare sect. 80, *ante*, p. 220.

25 & 26 Vict. c. 89, s. 199.

at law or in equity, by assignment or otherwise, in a sum exceeding fifty pounds then due, has served on the company, by leaving the same at the principal place of business of the company, or by delivering to the secretary or some director or principal officer of the company, or by otherwise serving the same in such manner as the court may approve or direct, a demand under his hand requiring the company to pay the sum so due, and the company has for the space of three weeks succeeding the service of such demand neglected to pay such sum, or to secure or compound for the same to the satisfaction of the creditor;

(*b*) Whenever any action, suit or other proceeding has been instituted against any member of the company for any debt or demand due, or claimed to be due, from the company, or from him in his character of member of the company, and notice in writing of the institution of such action, suit or other legal proceeding having been served upon the company by leaving the same at the principal place of business of the company, or by delivering it to the secretary, or some director, manager or principal officer of the company, or by otherwise serving the same in such manner as the court may approve or direct, the company has not within ten days after service of such notice paid, secured or compounded for such debt or demand, or procured such action, suit or other legal proceeding to be stayed, or indemnified the defendant to his reasonable satisfaction against such action, suit or other legal proceeding, and against all costs, damages and expenses to be incurred by him by reason of the same;

(*c*) Whenever, in England or Ireland, execution or other process issued on a judgment, decree or order obtained in any court in favour of any creditor in any proceeding at law or in equity instituted by such creditor against the company, or any member thereof as such, or against any person authorized to be sued as nominal defendant on behalf of the company, is returned unsatisfied;

(*d*) Whenever, in the case of an unregistered company engaged in working mines within and subject to the jurisdiction of the stannaries, a customary decree or order absolute for the sale of the machinery, materials and effects of such mine has been made in a creditor's suit in the court of the vice-warden;

(*e*) Whenever, in Scotland, the inducíæ of a charge for payment on an extract decree, or an extract registered bond, or an extract registered protest, have expired without payment being made;

(*f*) Whenever it is otherwise proved to the satisfaction of the court that the company is unable to pay its debts.

Who to be deemed a contributory in the event of company being wound up (1).

200. In the event of an unregistered company being wound up every person shall be deemed to be a contributory who is liable, at law or in equity, to pay or contribute to the payment of any debt or liability of the company, or to pay or contribute to the payment of any sum for the adjustment of the rights of the members amongst themselves, or to pay or contribute to the payment of the costs, charges and expenses of winding-up the company, and every such contributory shall be liable to contribute to the assets of the company in the course of the winding-up all sums due from him in respect of any such liability as aforesaid; but in the event of the death, bankruptcy or insolvency of any contributory, or marriage of any female contributory, the provisions hereinbefore contained with respect to the personal representatives, heirs and devisees of a deceased contributory, and to the assignees of a bankrupt or insolvent

(1) Persons liable to the creditors, but not liable to contribute as against the shareholders, are not to be put on the list until it is shown that the persons primarily liable are unable to discharge all the liabilities of the company. *Dover, Hastings, &c. R. Co, Carew's Case* (2), 7 D. M. & G. 43; *Dover, Deal, &c. R. Co., e.p. Mowatt*, 3 D. M. & G. 254; *Mexican and South American Co., e.p. Grisewood*, 4 De G. & J. 544.

A father who had covenanted for his child was put on the list of contributories. *North of England Banking Co., e.p. Beaverley*, 1 De G. & Sm. 550.

A person who had agreed by an instrument in writing unstamped to become a member of a marine insurance association, but had never received any policy, notwithstanding that he had made contributions and made a claim for damages in respect of his ship, was not made a contributory. *London Marine Insurance Association, e.p. Smith*, 17 W. R. 491; L. R., 4 Ch. 611.

25 & 26 Vict. c. 89, s. 200.

contributory, and to the husband of married contributories, shall apply.

Power of court to restrain further proceedings (1), (3).

201. The court may, at any time after the presentation of a petition for winding-up an unregistered company, and before making an order for winding-up the company, upon the application of any creditor of the company, restrain further proceedings in any action, suit or proceeding against any contributory of the company, or against the company as hereinbefore provided, upon such terms as the court thinks fit.

Effect of order for winding-up company (2), (3).

202. Where an order has been made for winding-up an unregistered company in addition to the provisions hereinbefore contained in the case of companies formed under this act, it is hereby further provided that no suit, action or other legal proceeding shall be commenced or proceeded with against any

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(1) It was doubted whether, where an execution had been perfected by seizure before the presentation of a petition for winding-up, the court has jurisdiction under section 201 to restrain a sale. *Re The Great Ship Co., e.p. Parry*, 33 L. J., Ch. 245; 3 N. R. 181.

It was also doubted whether an injunction could properly be granted *ex parte*. *Ib.*

In a case where a creditor had obtained judgment after long and expensive litigation, an injunction restraining the sheriff from selling goods seized in execution of that judgment was discharged. *Ib.*

The sheriff was not allowed costs of appearances on appeal, he not having been served with notice of appeal. *Ib.*

(2) A judgment creditor of a company had sued out a writ of elegit against the property of a shareholder. A suit to redeem a mortgage on land of the shareholder, delivered to the creditor in execution, was not within a similar prohibition under 20 & 21 Vict. c 78, s. 7. *Barnes* v. *Thrupp*, 27 L. J., Ch. 183; 3 Jur., N. S. 1242.

A claimant against a company which was being wound up under the Winding-up Act, 1848, had proof of his debt disallowed. The court allowed him to proceed at law against an individual shareholder. *Patent Elastic Pavement Co., Armstrong's Case*, 3 De G. & Sm. 140.

A creditor was restrained from taking proceedings against property of the company abroad. *South Eastern of Portugal R. Co., Waring's Case*, 17 W. R. 982.

After an order had been made for winding-up, a judgment creditor was restrained by injunction from proceeding to execution under a *fi. fa.* against the company. *Waterloo Life, &c. Assurance Co.*, 32 L. J., Ch. 371; 31 Beav. 589.

A judgment had been signed on a *sci. fa.* against a shareholder. He compromised with the liquidator under 20 & 21 Vict. c. 78. The court stayed proceedings without terms. *Cleave* v. *Harwar*, 29 L. J., Ex. 477; 6 H. & N. 22.

(3) See further, sects. 85, 87, 138, 163, 197, 198, *ante*, pp. 226, 228, 260, 280, 296, 297.

contributory of the company in respect of any debt of the company, except with the leave of the court, and subject to such terms as the court may impose.

Provision in case of unregistered company.

203. If any unregistered company has no power to sue and be sued in a common name, or if for any reason it appears expedient, the court may by the order made for winding-up such company, or by any subsequent order, direct that all such property, real and personal, including all interest, claims and rights into and out of property, real and personal, and including things in action, as may belong to or be vested in the company, or to or in any person or persons on trust for or on behalf of the company, or any part of such property, is to vest in the official liquidator or official liquidators by his or their official name or names, and thereupon the same or such part thereof as may be specified in the order shall vest accordingly, and the official liquidator or official liquidators may, in his or their official name or names, or in such name or names and after giving such indemnity as the court directs, bring or defend any actions, suits or other legal proceeding relating to any property vested in him or them, or any actions, suits or other legal proceedings necessary to be brought or defended for the purposes of effectually winding-up the company and recovering the property thereof.

Provisions in this part of act cumulative.

204. The provisions made by this part of the act with respect to unregistered companies shall be deemed to be made in addition to and not in restriction of any provisions hereinbefore contained with respect to winding-up companies by the court, and the court or official liquidator may, in addition to anything contained in this part of the act, exercise any powers or do any act in the case of unregistered companies which might be exercised or done by it or him in winding-up companies formed under this act; but an unregistered company shall not, except in the event of its being wound up, be deemed to be a company under this act, and then only to the extent provided by this part of this act.

PART IX.

REPEAL OF ACTS, AND TEMPORARY PROVISIONS.

Repeal of acts.

205. After the commencement of this act there shall be repealed the several acts specified in the first part of the third

25 & 26 Vict. c. 89, s. 205.

schedule hereto, with this qualification, that so much of the said acts as is set forth in the second part of the said third schedule shall be hereby re-enacted and continued in force as if unrepealed.

Saving clause as to repeal.

206. No repeal hereby enacted shall affect,

(1.) Anything duly done under any acts hereby repealed;

(2.) The incorporation of any company registered under any act hereby repealed;

(3.) Any right or privilege acquired or liability incurred under any act hereby repealed (1);

(4.) Any penalty, forfeiture or other punishment incurred in respect of any offence against any act hereby repealed;

(5.) Table (B) in the schedule annexed to the Joint Stock Companies Act, 1856, or any part thereof, so far as the same applies to any company existing at the time of the commencement of this act (2).

Saving of existing proceedings for winding-up (3).

207. Where previously to the commencement of this act an order has been made for winding-up a company under any acts or act hereby repealed, or a resolution has been passed for winding-up a company voluntarily, such company shall be wound up in the same manner and with the same incidents as if this act were not passed, and for the purposes of such winding-up such repealed acts or act shall be deemed to remain in full force.

Saving of conveyance deeds.

208. Where previously to the commencement of this act any conveyance, mortgage or other deed has been made in pursuance of any act hereby repealed, such deed shall be of the same force as if this act had not passed, and for the purposes of such deed such repealed act shall be deemed to remain in full force.

Compulsory registration of certain companies.

209. Every insurance company completely registered under the act passed in the eighth year of the reign of her present

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(1) See *Prince* v. *Prince*, L. R., 1 Eq. 490; 35 L. J., Ch. 240, *ante*, p. 76.

(2) This table is inserted *post*.

(3) For instances of companies ordered to be wound up under the previous acts after the passing of the Act of 1862, on account of resolutions having been previously passed to wind them up voluntarily, see *West Silver Bank Mining Co.*, 11 W. R. 394; N. R. 463; 32 Beav. 226; *Fire Annihilator Co.*, 2 N. R. 99; 32 Beav. 561.

Majesty, chapter one hundred and ten (1), intituled "An Act for the Registration, Incorporation and Regulation of Joint Stock Companies," shall on or before the second day of November, one thousand eight hundred and sixty-two, and every other company required by any act hereby repealed to register under the said Joint Stock Companies Acts, or one of such acts, and which has not so registered, shall, on or before the expiration of the thirty-first day from the commencement of this act, register itself as a company under this act, in manner and subject to the regulations hereinbefore contained, with this exception, that no company completely registered under the said act of the eighth year of the reign of her present Majesty shall be required to deliver to the registrar a copy of its deed of settlement; and for the purpose of enabling such insurance companies as are mentioned in this section to register under this act, this act shall be deemed to come into operation immediately on the passing thereof; nevertheless the registration of such companies shall not have any effect until the time of the commencement of this act. No fees shall be charged in respect of the registration of any company required to register by this section.

Penalty on company not registering. 21 Vict. c. 14, s. 28.

210. If any company required by the last section to register under this act makes default in complying with the provisions thereof, then, from and after the day upon which such company is required to register under this act, until the day on which such company is registered under this act (which it is empowered to do at any time), the following consequences shall ensue, (that is to say,)

(1.) The company shall be incapable of suing (2) either at law or in equity, but shall not be incapable of being made a defendant to a suit either at law or in equity;

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(1) See *ante*, sect. 2, p. 177.

The Joint Stock Companies Act, 1844, expressly included insurance companies (7 & 8 Vict. c. 110, s. 2), but they were excluded from the operation of the Act of 1856 (19 & 20 Vict. c. 47, s. 2).

(2) An insurance company which has not been registered under the 209th section of this act is by this section incapacitated from suing: it was held, that the presenting of a petition to wind up is a suing within the act, and that the joining the chairman, who was a contributory, as a co-petitioner with the company made no difference. *Re Waterloo Life, &c. Assurance Co.*, 11 W. R. 134.

25 & 26 Vict. c. 89, s. 210.

(2.) No dividend shall be payable to any shareholder in such company;

(3.) Each director or manager of the company shall for each day during which the company so being in default carries on business incur a penalty not exceeding five pounds, and such penalty may be recovered by any person, whether a shareholder or not in the company, and be applied by him to his own use:

Nevertheless, such default shall not render the company so being in default illegal, nor subject it to any penalty or disability, other than as specified in this section; and registration under this act shall cancel any penalty or forfeiture, and put an end to any disability which any company may have incurred under any act hereby repealed by reason of its not having registered under the said Joint Stock Companies Acts, 1856, 1857, or one of them.

Temporary power for companies to change registered office.

211. Upon the application of the directors of any company registered under the Joint Stock Companies Acts as hereinbefore defined, or any of them, made within one year after the date of the commencement of this act, sanctioned by a resolution passed at an extraordinary general meeting, but subject to the restrictions hereinafter mentioned, the board of trade shall have authority by their certificate in writing to change the registered office of any such company from any one part of the United Kingdom of Great Britain and Ireland to any other part thereof, and the registrar of joint stock companies with whom the memorandum of registration of such company has been registered shall, upon receipt of such certificate, note in writing upon the margin or at the foot of the said memorandum the name of the place to which such registered office is to be transferred, and the day upon which such transfer is pursuant to such certificate to take place, and shall attach the certificate to the memorandum, and the said registrar shall thereupon transmit to the registrar of joint stock companies for that part of the United Kingdom to which the registered office is to be so transferred copies of the said certificate and of the said memorandum of registration so noted certified by him; and the said registrar for the said last-mentioned part of the United Kingdom shall, upon receipt of such copies of certificate and memorandum, retain and register the same in like manner, and on

payment of the like fees to him as provided in the case of the registration of an original memorandum of registration, and thereupon the place of the registered office shall, from the said last-mentioned registration and the said day mentioned in the said certificate, be the place mentioned as such on the said certificate: provided, however, that such change shall in nowise alter or affect anything theretofore done by the said company, or any of their rights or liabilities in respect thereof.

Restrictions on issue of certificate.

212. The board of trade shall not issue their certificate in pursuance of the foregoing section until they are satisfied that an advertisement of the intention of the company to apply to the board of trade for a certificate, with a declaration that all parties objecting thereto are forthwith to apply to the board of trade, has been published once at the least in each of four successive weeks in the newspapers following; that is to say, in some newspaper circulating in the district where the registered office of the company is situate, and also if the company is registered in England in the London Gazette, if in Ireland in the Dublin Gazette, if in Scotland in the Edinburgh Gazette, nor until the said board are satisfied that the objections, if any, that may be urged against the issue of such certificate are groundless.

FIRST SCHEDULE.

TABLE A (*a*).

Regulations for Management of a Company limited by Shares.

Shares.

25 & 26 Vict. c. 89.

(1.) If several persons are registered as joint holders of any share, any one of such persons may give effectual receipts for any dividend payable in respect of such share.

(2.) Every member shall, on payment of one shilling, or such less sum as the company in general meeting may prescribe, be entitled to a certificate, under the common seal of the company, specifying the share or shares held by him, and the amount paid up thereon.

(3.) If such certificate is worn out or lost, it may be renewed on payment of one shilling, or such less sum as the company in general meeting may prescribe.

Calls on Shares.

(4.) The directors may from time to time make such calls upon the members in respect of all monies unpaid on their shares as they think fit, provided that twenty-one days' notice at least is given of each call, and each member shall be liable to pay the amount of calls so made to the persons and at the times and places appointed by the directors.

(5.) A call shall be deemed to have been made at the time when the resolution of the directors authorizing such call was passed.

(6.) If the call payable in respect of any share is not paid before or on the day appointed for payment thereof, the holder for the time being of such share shall be liable to pay interest for the same at the rate of five pounds per cent. per annum from the day appointed for the payment thereof to the time of the actual payment.

(7.) The directors may, if they think fit, receive from any member willing to advance the same, all or any part of the monies due upon the shares held by him beyond the sums actually called for; and upon the monies so paid in advance, or so much thereof as from time to time exceeds the amount of the calls then made upon the shares in respect of which such advance has been made, the company may pay interest at such rate as the member paying such sum in advance and the directors agree upon.

(*a*) See sects. 15, 176, 196, *ante*, pp. 185, 287, 294.

Transfers of Shares.

(8.) The instrument of transfer of any share in the company shall be executed both by the transferor and transferee, and the transferor shall be deemed to remain a holder of such share until the name of the transferee is entered in the register book in respect thereof.

(9.) Shares in the company shall be transferred in the following form:—

I, A. B. of in consideration of the sum of pounds paid to me by C. D. of , do hereby transfer to the said C. D. the share [*or* shares] numbered standing in my name in the books of the company, to hold unto the said C. D., his executors, administrators and assigns, subject to the several conditions on which I held the same at the time of the execution hereof; and I the said C. D. do hereby agree to take the said share [*or* shares] subject to the same conditions. As witness our hands, the day of .

(10.) The company may decline to register any transfer of shares made by a member who is indebted to them.

(11.) The transfer books shall be closed during the fourteen days immediately preceding the ordinary general meeting in each year.

Transmission of Shares.

(12.) The executors or administrators of a deceased member shall be the only persons recognized by the company as having any title to his share.

(13.) Any person becoming entitled to a share in consequence of the death, bankruptcy or insolvency of any member, or in consequence of the marriage of any female member, may be registered as a member upon such evidence being produced as may from time to time be required by the company.

(14.) Any person who has become entitled to a share in consequence of the death, bankruptcy or insolvency of any member, or in consequence of the marriage of any female member, may, instead of being registered himself, elect to have some person to be named by him registered as a transferee of such share.

(15.) The person becoming entitled shall testify such election by executing to his nominee an instrument of transfer of such share.

(16.) The instrument of transfer shall be presented to the company, accompanied with such evidence as the directors may require to prove the title of the transferor, and thereupon the company shall register the transferee as a member.

Forfeiture of Shares.

(17.) If any member fails to pay any call on the day appointed for payment thereof, the directors may, at any time thereafter, during such time as the call remains unpaid, serve a notice on him, requiring him to pay such call, together with interest and any expenses that may have accrued by reason of such nonpayment.

25 & 26 Vict. c. 89. Table A.

(18.) The notice shall name a further day, on or before which such call, and all interest and expenses that have accrued by reason of such nonpayment, are to be paid. It shall also name the place where payment is to be made (the place so named being either the registered office of the company or some other place at which calls of the company are usually made payable). The notice shall also state that in the event of nonpayment at or before the time and at the place appointed the shares in respect of which such call was made will be liable to be forfeited.

(19.) If the requisitions of any such notice as aforesaid are not complied with, any share in respect of which such notice has been given may at any time thereafter, before payment of all calls, interest and expenses due in respect thereof has been made, be forfeited, by a resolution of the directors to that effect.

(20.) Any share so forfeited shall be deemed to be the property of the company, and may be disposed of in such manner as the company in general meeting thinks fit.

(21.) Any member whose shares have been forfeited shall notwithstanding be liable to pay to the company all calls owing upon such shares at the time of the forfeiture.

(22.) A statutory declaration in writing, that the call in respect of a share was made and notice thereof given, and that default in payment of the call was made, and that the forfeiture of the share was made by a resolution of the directors to that effect, shall be sufficient evidence of the facts therein stated, as against all persons entitled to such share, and such declaration and the receipt of the company for the price of such share shall constitute a good title to such share, and a certificate of proprietorship shall be delivered to a purchaser, and thereupon he shall be deemed the holder of such share discharged from all calls due prior to such purchase, and he shall not be bound to see to the application of the purchase-money, nor shall his title to such share be affected by any irregularity in the proceedings in reference to such sale.

Conversion of Shares into Stock (*a*).

(23.) The directors may, with the sanction of the company previously given in general meeting, convert any paid up shares into stock.

(24.) When any shares have been converted into stock, the several holders of such stock may thenceforth transfer their respective interests therein, or any part of such interests, in the same manner and subject to the same regulations as and subject to which any shares in the capital of the company may be transferred, or as near thereto as circumstances admit.

(25.) The several holders of stock shall be entitled to participate in the dividends and profits of the company according to the amount of their respective interests in such stock; and such interests shall, in proportion to the amount thereof, confer on the holders thereof respectively the same privileges and advantages for the purpose of voting at meetings of the company, and for other purposes, as would have been conferred by shares of

(*a*) See sect. 29, *ante*, p. 192.

equal amount in the capital of the company; but so that none of such privileges or advantages, except the participation in the dividends and profits of the company, shall be conferred by any such aliquot part of consolidated stock as would not, if existing in shares, have conferred such privileges or advantages.

Increase in Capital (a).

(26.) The directors may, with the sanction of a special resolution of the company previously given in general meeting, increase its capital by the issue of new shares, such aggregate increase to be of such amount, and to be divided into shares of such respective amounts, as the company in general meeting directs, or, if no direction is given, as the directors think expedient.

(27.) Subject to any direction to the contrary that may be given by the meeting that sanctions the increase of capital, all new shares shall be offered to the members in proportion to the existing shares held by them, and such offer shall be made by notice specifying the number of shares to which the member is entitled, and limiting a time within which the offer, if not accepted, will be deemed to be declined, and after the expiration of such time, or on the receipt of an intimation from the member to whom such notice is given that he declines to accept the shares offered, the directors may dispose of the same in such manner as they think most beneficial to the company.

(28.) Any capital raised by the creation of new shares shall be considered as part of the original capital, and shall be subject to the same provisions with reference to the payment of calls, and the forfeiture of shares on nonpayment of calls, or otherwise, as if it had been part of the original capital.

General Meetings.

(29.) The first general meeting shall be held at such time, not being more than six months after the registration of the company, and at such place, as the directors may determine.

(30.) Subsequent general meetings shall be held at such time and place as may be prescribed by the company in general meeting; and if no other time or place is prescribed, a general meeting shall be held on the first Monday in February in every year, at such place as may be determined by the directors.

(31.) The above-mentioned general meetings shall be called ordinary meetings; all other general meetings shall be called extraordinary.

(32.) The directors may, whenever they think fit, and they shall upon a requisition made in writing by not less than one fifth in number of the members of the company, convene an extraordinary general meeting.

(33.) Any requisition made by the members shall express the object of the meeting proposed to be called, and shall be left at the registered office of the company.

(34.) Upon the receipt of such requisition the directors shall forthwith proceed to convene an extraordinary general meeting. If

(*a*) See sect. 12, *ante*, p. 183.

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they do not proceed to convene the same within twenty-one days from the date of the requisition, the requisitionists, or any other members amounting to the required number, may themselves convene an extraordinary general meeting.

Proceedings at General Meetings.

(35.) Seven days' notice at the least, specifying the place, the day and the hour of meeting, and in case of special business the general nature of such business, shall be given to the members in manner hereinafter mentioned, or in such other manner, if any, as may be prescribed by the company in general meeting; but the non-receipt of such notice by any member shall not invalidate the proceedings at any general meeting.

(36.) All business shall be deemed special that is transacted at an extraordinary meeting, and all that is transacted at an ordinary meeting, with the exception of sanctioning a dividend and the consideration of the accounts, balance sheets and the ordinary report of the directors.

(37.) No business shall be transacted at any general meeting, except the declaration of a dividend, unless a quorum of members is present at the time when the meeting proceeds to business; and such quorum shall be ascertained as follows; that is to say, if the persons who have taken shares in the company at the time of the meeting do not exceed ten in number, the quorum shall be five; if they exceed ten there shall be added to the above quorum one for every five additional members up to fifty, and one for every ten additional members after fifty, with this limitation, that no quorum shall in any case exceed twenty.

(38.) If within one hour from the time appointed for the meeting a quorum is not present, the meeting, if convened upon the requisition of members, shall be dissolved: in any other case it shall stand adjourned to the same day in the next week, at the same time and place; and if at such adjourned meeting a quorum is not present, it shall be adjourned *sine die.*

(39.) The chairman (if any) of the board of directors shall preside as chairman at every general meeting of the company.

(40.) If there is no such chairman, or if at any meeting he is not present within fifteen minutes after the time appointed for holding the meeting, the members present shall choose some one of their number to be chairman.

(41.) The chairman may, with the consent of the meeting, adjourn any meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.

(42.) At any general meeting, unless a poll is demanded by at least five members, a declaration by the chairman that a resolution has been carried, and an entry to that effect in the book of proceedings of the company, shall be sufficient evidence of the fact, without proof of the number or proportion of the votes recorded in favour of or against such resolution.

(43.) If a poll is demanded by five or more members it shall be taken in such manner as the chairman directs, and the result of such poll shall be deemed to be the resolution of the company

in general meeting. In the case of an equality of votes at any general meeting the chairman shall be entitled to a second or casting vote.

Votes of Members.

(44.) Every member shall have one vote for every share up to ten: he shall have an additional vote for every five shares beyond the first ten shares up to one hundred, and an additional vote for every ten shares beyond the first hundred shares.

(45.) If any member is a lunatic or idiot he may vote by his committee, *curator bonis* or other legal *curator*.

(46.) If one or more persons are jointly entitled to a share or shares, the member whose name stands first in the register of members as one of the holders of such share or shares, and no other, shall be entitled to vote in respect of the same.

(47.) No member shall be entitled to vote at any general meeting unless all calls due from him have been paid, and no member shall be entitled to vote in respect of any share that he has acquired by transfer at any meeting held after the expiration of three months from the registration of the company, unless he has been possessed of the share in respect of which he claims to vote for at least three months previously to the time of holding the meeting at which he proposes to vote.

(48.) Votes may be given either personally or by proxy.

(49.) The instrument appointing a proxy shall be in writing, under the hand of the appointor, or if such appointor is a corporation, under their common seal, and shall be attested by one or more witness or witnesses: no person shall be appointed a proxy who is not a member of the company.

(50.) The instrument appointing a proxy shall be deposited at the registered office of the company not less than seventy-two hours before the time for holding the meeting at which the person named in such instrument proposes to vote, but no instrument appointing a proxy shall be valid after the expiration of twelve months from the date of its execution.

(51.) Any instrument appointing a proxy shall be in the following form:—

—— Company limited.

I of in the county of being a member of the company limited, and entitled to vote [*or* votes], hereby appoint of as my proxy, to vote for me and on my behalf at the [ordinary *or* extraordinary, *as the case may be*] general meeting of the company to be held on the day of and at any adjournment thereof [*or* at any meeting of the company that may be held in the year].

As witness my hand this day of .

Signed by the said in the presence of .

Directors.

(52.) The number of the directors, and the names of the first directors, shall be determined by the subscribers of the memorandum of association.

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(53.) Until directors are appointed the subscribers of the memorandum of association shall be deemed to be directors.

(54.) The future remuneration of the directors, and their remuneration for services performed previously to the first general meeting, shall be determined by the company in general meeting.

Powers of Directors.

(55.) The business of the company shall be managed by the directors, who may pay all expenses incurred in getting up and registering the company, and may exercise all such powers of the company as are not by the foregoing act, or by these articles, required to be exercised by the company in general meeting, subject nevertheless to any regulations of these articles, to the provisions of the foregoing act, and to such regulations, being not inconsistent with the aforesaid regulations or provisions, as may be prescribed by the company in general meeting, but no regulation made by the company in general meeting shall invalidate any prior act of the directors which would have been valid if such regulation had not been made.

(56.) The continuing directors may act notwithstanding any vacancy in their body.

Disqualification of Directors.

(57.) The office of director shall be vacated,—

If he holds any other office or place of profit under the company;

If he becomes bankrupt or insolvent;

If he is concerned in or participates in the profits of any contract with the company;

But the above rules shall be subject to the following exceptions: that no director shall vacate his office by reason of his being a member of any company which has entered into contracts with or done any work for the company of which he is a director; nevertheless he shall not vote in respect of such contract or work; and if he does so vote his vote shall not be counted.

Rotation of Directors.

(58.) At the first ordinary meeting after the registration of the company the whole of the directors shall retire from office; and at the first ordinary meeting in every subsequent year one-third of the directors for the time being, or if their number is not a multiple of three, then the number nearest to one-third, shall retire from office.

(59.) The one-third or other nearest number to retire during the first and second years ensuing the first ordinary meeting of the company shall, unless the directors agree among themselves, be determined by ballot: in every subsequent year the one-third or other nearest number who have been longest in office shall retire.

(60.) A retiring director shall be re-eligible.

(61.) The company at the general meeting at which any directors retire in manner aforesaid shall fill up the vacated offices by electing a like number of persons.

(62.) If at any meeting at which an election of directors ought to take place the places of the vacating directors are not filled up, the meeting shall stand adjourned till the same day in the next week, at the same time and place; and if at such adjourned meeting the places of the vacating directors are not filled up, the vacating directors, or such of them as have not had their places filled up, shall continue in office until the ordinary meeting in the next year, and so on from time to time until their places are filled up.

(63.) The company may from time to time, in general meeting, increase or reduce the number of directors, and may also determine in what rotation such increased or reduced number is to go out of office.

(64.) Any casual vacancy occurring in the board of directors may be filled up by the directors, but any person so chosen shall retain his office so long only as the vacating director would have retained the same if no vacancy had occurred.

(65.) The company, in general meeting, may, by a special resolution, remove any director before the expiration of his period of office, and may by an ordinary resolution appoint another person in his stead: the person so appointed shall hold office during such time only as the director in whose place he is appointed would have held the same if he had not been removed.

Proceedings of Directors.

(66.) The directors may meet together for the despatch of business, adjourn and otherwise regulate their meetings as they think fit, and determine the quorum necessary for the transaction of business: questions arising at any meeting shall be decided by a majority of votes: in case of an equality of votes the chairman shall have a second or casting vote: a director may at any time summon a meeting of the directors.

(67.) The directors may elect a chairman of their meetings, and determine the period for which he is to hold office; but if no such chairman is elected, or if at any meeting the chairman is not present at the time appointed for holding the same, the directors present shall choose some one of their number to be chairman of such meeting.

(68.) The directors may delegate any of their powers to committees consisting of such member or members of their body as they think fit: any committee so formed shall, in the exercise of the powers so delegated, conform to any regulations that may be imposed on them by the directors.

(69.) A committee may elect a chairman of their meetings: if no such chairman is elected, or if he is not present at the time appointed for holding the same, the members present shall choose one of their number to be chairmain of such meeting.

(70.) A committee may meet and adjourn as they think proper: questions arising at any meeting shall be determined by a majority of votes of the members present; and in case of an equality of votes the chairman shall have a second or casting vote.

(71.) All acts done by any meeting of the directors, or of a com-

25 & 26 Vict. c. 89. Table A.

mittee of directors, or by any person acting as a director, shall, notwithstanding that it be afterwards discovered that there was some defect in the appointment of any such directors or persons acting as aforesaid, or that they or any of them were disqualified, be as valid as if every such person had been duly appointed and was qualified to be a director.

Dividends.

(72.) The directors may, with the sanction of the company in general meeting, declare a dividend to be paid to the members in proportion to their shares.

(73.) No dividend shall be payable except out of the profits arising from the business of the company.

(74.) The directors may, before recommending any dividend, set aside out of the profits of the company such sum as they think proper as a reserved fund to meet contingencies, or for equalizing dividends, or for repairing or maintaining the works connected with the business of the company, or any part thereof; and the directors may invest the sum so set apart as a reserved fund upon such securities as they may select.

(75.) The directors may deduct from the dividends payable to any member all such sums of money as may be due from him to the company on account of calls or otherwise.

(76.) Notice of any dividend that may have been declared shall be given to each member in manner hereinafter mentioned; and all dividends unclaimed for three years, after having been declared, may be forfeited by the directors for the benefit of the company.

(77.) No dividend shall bear interest as against the company.

Accounts.

(78.) The directors shall cause true accounts to be kept,—

Of the stock in trade of the company;

Of the sums of money received and expended by the company, and the matter in respect of which such receipt and expenditure takes place; and,

Of the credits and liabilities of the company:

The books of account shall be kept at the registered office of the company, and, subject to any reasonable restrictions as to the time and manner of inspecting the same that may be imposed by the company in general meeting, shall be open to the inspection of the members during the hours of business.

(79.) Once at the least in every year the directors shall lay before the company in general meeting a statement of the income and expenditure for the past year, made up to a date not more than three months before such meeting.

(80.) The statement so made shall show, arranged under the most convenient heads, the amount of gross income, distinguishing the several sources from which it has been derived, and the amount of gross expenditure, distinguishing the expense of the establishment, salaries and other like matters: every item of expenditure fairly chargeable against the year's income shall be brought into account, so that a just balance of profit and loss

may be laid before the meeting; and in cases where any item of expenditure which may in fairness be distributed over several years has been incurred in any one year the whole amount of such item shall be stated, with the addition of the reasons why only a portion of such expenditure is charged against the income of the year.

(81.) A balance sheet shall be made out in every year, and laid before the company in general meeting, and such balance sheet shall contain a summary of the property and liabilities of the company arranged under the heads appearing in the form annexed to this table, or as near thereto as circumstances admit.

(82.) A printed copy of such balance sheet shall, seven days previously to such meeting, be served on every member in the manner in which notices are hereinafter directed to be served.

Audit.

(83.) Once at the least in every year the accounts of the company shall be examined, and the correctness of the balance sheet ascertained, by one or more auditor or auditors.

(84.) The first auditors shall be appointed by the directors: subsequent auditors shall be appointed by the company in general meeting.

(85.) If one auditor only is appointed, all the provisions herein contained relating to auditors shall apply to him.

(86.) The auditors may be members of the company; but no person is eligible as an auditor who is interested otherwise than as a member in any transaction of the company; and no director or other officer of the company is eligible during his continuance in office.

(87.) The election of auditors shall be made by the company at their ordinary meeting in each year.

(88.) The remuneration of the first auditors shall be fixed by the directors; that of subsequent auditors shall be fixed by the company in general meeting.

(89.) Any auditor shall be re-eligible on his quitting office.

(90.) If any casual vacancy occurs in the office of any auditor appointed by the company, the directors shall forthwith call an extraordinary general meeting for the purpose of supplying the same.

(91.) If no election of auditors is made in manner aforesaid the board of trade may, on the application of not less than five members of the company, appoint an auditor for the current year, and fix the remuneration to be paid to him by the company for his services.

(92.) Every auditor shall be supplied with a copy of the balance sheet, and it shall be his duty to examine the same, with the accounts and vouchers relating thereto.

(93.) Every auditor shall have a list delivered to him of all books kept by the company, and shall at all reasonable times have access to the books and accounts of the company: he may, at the expense of the company, employ accountants or other persons to assist him in investigating such accounts, and he may

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in relation to such accounts examine the directors or any other officer of the company.

(94.) The auditors shall make a report to the members upon the balance sheet and accounts, and in every such report they shall state whether, in their opinion, the balance sheet is a full and fair balance sheet, containing the particulars required by these regulations, and properly drawn up so as to exhibit a true and correct view of the state of the company's affairs, and in case they have called for explanations or information from the directors, whether such explanations or information have been given by the directors, and whether they have been satisfactory; and such report shall be read, together with the report of the directors, at the ordinary meeting.

Notices.

(95.) A notice may be served by the company upon any member either personally, or by sending it through the post in a prepaid letter addressed to such member at his registered place of abode.

(96.) All notices directed to be given to the members shall, with respect to any share to which persons are jointly entitled, be given to whichever of such persons is named first in the register of members; and notice so given shall be sufficient notice to all the holders of such share.

(97.) Any notice, if served by post, shall be deemed to have been served at the time when the letter containing the same would be delivered in the ordinary course of the post; and in proving such service it shall be sufficient to prove that the letter containing the notices was properly addressed and put into the post office.

Dr. BALANCE SHEET of the Company made up to 18 . *Cr.*

CAPITAL AND LIABILITIES.			£ s. d.	£ s. d.
I. CAPITAL.		Showing:		
	1.	The Number of Shares		
	2.	The Amount paid per Share		
	3.	If any Arrears of Calls, the Nature of the Arrear, and the Names of the Defaulters.		
	4.	The Particulars of any forfeited Shares.		
II. DEBTS AND LIABILITIES of the Company.		Showing:		
	5.	The Amount of Loans on Mortgages or Debenture Bonds.		
	6.	The Amount of Debts owing by the Company, distinguishing—		
		(*a.*) Debts for which Acceptances have been given.		
		(*b.*) Debts to Tradesmen for Supplies of Stock in Trade or other Articles.		
		(*c.*) Debts for Law Expenses.		
		(*d.*) Debts for Interest on Debentures or other Loans.		
		(*e.*) Unclaimed Dividends.		
		(*f.*) Debts not enumerated above.		
VI. RESERVE FUND.		Showing:		
		The Amount set aside from Profits to meet Contingencies.		
VII. PROFIT AND LOSS.		Showing:		
		The disposable Balance for Payment of Dividend, &c.		
CONTINGENT LIABILITIES.		Claims against the Company not acknowledged as Debts.		
		Monies for which the Company is contingently liable.		

PROPERTY AND ASSETS.			£ s. d.	£ s. d.
III. PROPERTY held by the Company.		Showing:		
	7.	Immovable Property, distinguishing—		
		(*a.*) Freehold Land		
		(*b.*) „ Buildings		
		(*c.*) Leasehold „		
	8.	Movable Property, distinguishing—		
		(*d.*) Stock in Trade		
		(*e.*) Plant		
		The Cost to be stated with Deductions for Deterioration in Value as charged to the Reserve Fund or Profit and Loss.		
IV. DEBTS owing to the Company.		Showing:		
	9.	Debts considered good for which the Company hold Bills or other Securities.		
	10.	Debts considered good for which the Company hold no Security.		
	11.	Debts considered doubtful and bad.		
		Any Debt due from a Director or other Officer of the Company to be separately stated.		
V. CASH AND INVESTMENTS.		Showing:		
	12.	The Nature of Investment and Rate of Interest.		
	13.	The Amount of Cash, where lodged, and if bearing Interest.		

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TABLE B.

TABLE OF FEES to be paid to the REGISTRAR of JOINT STOCK COMPANIES by a Company having a Capital divided into Shares.

	£	s.	d.
For registration of a company whose nominal capital does not exceed 2,000*l.*, a fee of	2	0	0
For registration of a company whose nominal capital exceeds 2,000*l.*, the above fee of 2*l.*, with the following additional fees, regulated according to the amount of nominal capital, (that is to say,)			
For every 1,000*l.* of nominal capital, or part of 1,000*l.*, after the first 2,000*l.*, up to 5,000*l.*	1	0	0
For every 1,000*l.* of nominal capital, or part of 1,000*l.*, after the first 5,000*l.*, up to 100,000*l.*	0	5	0
For every 1,000*l.* of nominal capital, or part of 1,000*l.*, after the first 100,000*l.* . .	0	1	0
For registration of any increase of capital made after the first registration of the company, the same fees per 1,000*l.*, or part of a 1,000*l.*, as would have been payable if such increased capital had formed part of the original capital at the time of registration.			
Provided that no company shall be liable to pay in respect of nominal capital on registration, or afterwards, any greater amount of fees than 50*l.*, taking into account in the case of fees payable on an increase of capital after registration the fees paid on registration.			
For registration of any existing company, except such companies as are by this act exempted from payment of fees in respect of registration under this act, the same fee as is charged for registering a new company.			
For registering any document hereby required or authorized to be registered, other than the memorandum of association	0	5	0
For making a record of any fact hereby authorized or required to be recorded by the registrar of companies, a fee of	0	5	0

TABLE C.

TABLE OF FEES to be paid to the REGISTRAR of JOINT STOCK COMPANIES by a Company not having a Capital divided into Shares.

	£	s.	d.
For registration of a company whose number of members, as stated in the articles of association, does not exceed 20	2	0	0
For registration of a company whose number of members, as stated in the articles of association, exceeds 20, but does not exceed 100	5	0	0

	£	s.	d.
For registration of a company whose number of members, as stated in the articles of association, exceeds 100, but is not stated to be unlimited, the above fee of 5*l.*, with an additional 5*s.* for every 50 members or less number than 50 members after the first 100.			
For registration of a company in which the number of members is stated in the articles of association to be unlimited, a fee of	20	0	0
For registration of any increase on the number of members made after the registration of the company in respect of every 50 members, or less than 50 members, of such increase	0	5	0
Provided that no one company shall be liable to pay on the whole a greater fee than 20*l.* in respect of its number of members, taking into account the fee paid on the first registration of the company.			
For registration of any existing company, except such companies as are by this act exempted from payment of fees in respect of registration under this act, the same fee as is charged for registering a new company.			
For registering any document hereby required or authorized to be registered, other than the memorandum of association	0	5	0
For making a record of any fact hereby authorized or required to be recorded by the registrar of companies, a fee of	0	5	0

FORM D.

FORM OF STATEMENT referred to in Part III. of the Act.

The capital of the company is divided into shares of each (*a*).

The number of shares issued is .

Calls to the amount of pounds per share have been made, under which the sum of pounds has been received.

The liabilities of the company on the first day of January (*or* July) were,—

Debts owing to sundry persons by the company:

On judgment, £ .

On specialty, £ .

On notes or bills, £ .

On simple contracts, £ .

On estimated liabilities, £ .

The assets of the company on that day were,—

Government securities [*stating them*], £ .

Bills of exchange and promissory notes, £ .

Cash at the bankers, £ .

Other securities, £ .

(*a*) If the company has no capital divided into shares the portion of the statement relating to capital and shares must be omitted.

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SECOND SCHEDULE.

FORM A.

MEMORANDUM OF ASSOCIATION of a Company limited by Shares.

1st. The name of the company is "The Eastern Steam Packet Company, Limited."

2nd. The registered office of the company will be situate in England.

3rd. The objects for which the company is established are, "the conveyance of passengers and goods in ships or boats between such places as the company may from time to time determine, and the doing all such other things as are incidental or conducive to the attainment of the above object."

4th. The liability of the members is limited.

5th. The capital of the company is two hundred thousand pounds, divided into one thousand shares of two hundred pounds each.

We, the several persons whose names and addresses are subscribed, are desirous of being formed into a company, in pursuance of this memorandum of association, and we respectively agree to take the number of shares in the capital of the company set opposite our respective names.

Names, Addresses and Descriptions of Subscribers.			Number of Shares taken by each Subscriber.
1. John Jones of	in the county of	merchant	200
2. John Smith of	in the county of	.. ..	25
3. Thomas Green of	in the county of	.. ..	30
4. John Thompson of	in the county of	.. ..	40
5. Caleb White of	in the county of	.. ..	15
6. Andrew Brown of	in the county of	.. ..	5
7. Cæsar White of	in the county of	.. ..	10
Total shares taken			325

Dated the 22nd day of November, 1861.

Witness to the above signatures,

A. B., No. 13, Hute Street, Clerkenwell, Middlesex.

FORM B.

MEMORANDUM and ARTICLES of ASSOCIATION of a Company limited by Guarantee and not having a Capital divided into shares.

Memorandum of Association.

1st. The name of the company is "The Mutual London Marine Association, Limited."

2nd. The registered office of the company will be situate in England.

3rd. The objects for which the company is established are, "the mutual insurance of ships belonging to members of the company, and the doing all such other things as are incidental or conducive to the attainment of the above objects."

4th. Every member of the company undertakes to contribute to the assets of the company in the event of the same being wound up during the time that he is a member, or within one year afterwards, for payment of the debts and liabilities of the company contracted before the time at which he ceases to be a member, and the costs, charges and expenses of winding-up the same, and for the adjustment of the rights of the contributories amongst themselves, such amount as may be required not exceeding ten pounds.

We, the several persons whose names and addresses are subscribed, are desirous of being formed into a company, in pursuance of this memorandum of association.

Names, Addresses and Descriptions of Subscribers.

1. John Jones of in the county of merchant.
2. John Smith of in the county of
3. Thomas Green of in the county of
4. John Thompson of in the county of
5. Caleb White of in the county of
6. Andrew Brown of in the county of
7. Cæsar White of in the county of

Dated the 22nd day of November, 1861.

Witness to the above signatures,

A. B., No. 13, Hute Street, Clerkenwell, Middlesex.

Articles of Association to accompany preceding Memorandum of Association (*a*).

(1.) The company, for the purpose of registration, is declared to consist of five hundred members.

(2.) The directors hereinafter mentioned may, whenever the business of the association requires it, register an increase of members.

Definition of Members.

(3.) Every person shall be deemed to have agreed to become a member of the company who insures any ship or share in a ship in pursuance of the regulations hereinafter contained.

General Meetings.

(4.) The first general meeting shall be held at such time, not being more than three months after the incorporation of the company, and at such place as the directors may determine.

(5.) Subsequent general meetings shall be held at such time and

(*a*) See sect. 14, *ante*, p. 184.

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place as may be prescribed by the company in general meeting; and if no other time or place is prescribed, a general meeting shall be held on the first Monday in February in every year, at such place as may be determined by the directors.

(6.) The above-mentioned general meetings shall be called ordinary meetings; all other general meetings shall be called extraordinary.

(7.) The directors may, whenever they think fit, and they shall, upon a requisition made in writing by any five or more members, convene an extraordinary general meeting.

(8.) Any requisition made by the members shall express the object of the meeting proposed to be called, and shall be left at the registered office of the company.

(9.) Upon the receipt of such requisition the directors shall forthwith proceed to convene a general meeting: if they do not proceed to convene the same within twenty-one days from the date of the requisition, the requisitionists, or any other five members, may themselves convene a meeting.

Proceedings at General Meetings.

(10.) Seven days' notice at the least, specifying the place, the day and the hour of meeting, and in case of special business the general nature of such business, shall be given to the members in manner hereinafter mentioned, or in such other manner, if any, as may be prescribed by the company in general meeting; but the non-receipt of such notice by any member shall not invalidate the proceedings at any general meeting.

(11.) All business shall be deemed special that is transacted at an extraordinary meeting, and all that is transacted at an ordinary meeting, with the exception of the consideration of the accounts, balance sheets, and the ordinary report of the directors.

(12.) No business shall be transacted at any meeting except the declaration of a dividend, unless a quorum of members is present at the commencement of such business; and such quorum shall be ascertained as follows; that is to say, if the members of the company at the time of the meeting do not exceed ten in number, the quorum shall be five; if they exceed ten there shall be added to the above quorum one for every five additional members up to fifty, and one for every ten additional members after fifty, with this limitation, that no quorum shall in any case exceed thirty.

(13.) If within one hour from the time appointed for the meeting a quorum of members is not present, the meeting, if convened upon the requisition of the members, shall be dissolved: in any other case it shall stand adjourned to the same day in the following week at the same time and place; and if at such adjourned meeting a quorum of members is not present, it shall be adjourned sine die.

(14.) The chairman (if any) of the directors shall preside as chairman at every general meeting of the company.

(15.) If there is no such chairman, or if at any meeting he is not present at the time of holding the same, the members present

shall choose some one of their number to be chairman of such meeting.

(16.) The chairman may, with the consent of the meeting, adjourn any meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.

(17.) At any general meeting, unless a poll is demanded by at least five members, a declaration by the chairman that a resolution has been carried, and an entry to that effect in the book of proceedings of the company, shall be sufficient evidence of the fact, without proof of the number or proportion of the votes recorded in favour of or against such resolution.

(18.) If a poll is demanded in manner aforesaid, the same shall be taken in such manner as the chairman directs, and the result of such poll shall be deemed to be the resolution of the company in general meeting.

Votes of Members.

(19.) Every member shall have one vote and no more.

(20.) If any member is a lunatic or idiot he may vote by his committee, *curator bonis*, or other legal curator.

(21.) No member shall be entitled to vote at any meeting unless all monies due from him to the company have been paid.

(22.) Votes may be given either personally or by proxies: a proxy shall be appointed in writing under the hand of the appointor, or if such appointor is a corporation, under its common seal.

(23.) No person shall be appointed a proxy who is not a member, and the instrument appointing him shall be deposited at the registered office of the company not less than forty-eight hours before the time of holding the meeting at which he proposes to vote.

(24.) Any instrument appointing a proxy shall be in the following form:—

—— Company limited.

I of in the county of being a member of the Company Limited, hereby appoint of as my proxy, to vote for me and on my behalf at the [ordinary *or* extraordinary, *as the case may be*] general meeting of the company to be held on the day of , and at any adjournment thereof to be held on the day of next [*or*, at any meeting of the company that may be held in the year].

As witness my hand this day of .

Signed by the said in the presence of .

Directors.

(25.) The number of the directors, and the names of the first directors, shall be determined by the subscribers of the memorandum of association.

(26.) Until directors are appointed, the subscribers of the memorandum of association shall for all the purposes of this act be deemed to be directors.

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Powers of Directors.

(27.) The business of the company shall be managed by the directors, who may exercise all such powers of the company as are not hereby required to be exercised by the company in general meeting; but no regulation made by the company in general meeting shall invalidate any prior act of the directors which would have been valid if such regulation had not been made.

Election of Directors.

(28.) The directors shall be elected annually by the company in general meeting.

Business of Company.

[*Here insert rules as to mode in which business of insurance is to be conducted.*]

Accounts.

(29.) The accounts of the company shall be audited by a committee of five members, to be called the audit committee.

(30.) The first audit committee shall be nominated by the directors out of the body of members.

(31.) Subsequent audit committees shall be nominated by the members at the ordinary general meeting in each year.

(32.) The audit committee shall be supplied with a copy of the balance sheet, and it shall be their duty to examine the same with the accounts and vouchers relating thereto.

(33.) The audit committee shall have a list delivered to them of all books kept by the company, and they shall at all reasonable times have access to the books and accounts of the company: they may, at the expense of the company, employ accountants or other persons to assist them in investigating such accounts, and they may in relation to such accounts examine the directors or any other officer of the company.

(34.) The audit committee shall make a report to the members upon the balance sheet and accounts, and in every such report they shall state whether in their opinion the balance sheet is a full and fair balance sheet, containing the particulars required by these regulations of the company, and properly drawn up, so as to exhibit a true and correct view of the state of the company's affairs, and in case they have called for explanation or information from the directors, whether such explanations or information have been given by the directors, and whether they have been satisfactory, and such report shall be read together with the report of the directors at the ordinary meeting.

Notices.

(35.) A notice may be served by the company upon any member either personally, or by sending it through the post in a prepaid

letter addressed to such member at his registered place of abode.

(36.) Any notice, if served by post, shall be deemed to have been served at the time when the letter containing the same would be delivered in the ordinary course of the post; and in proving such service it shall be sufficient to prove that the letter containing the notice was properly addressed, and put into the post office.

Winding-up.

(37.) The company shall be wound up voluntarily whenever an extraordinary resolution, as defined by the Companies Act, 1862, is passed, requiring the company to be wound up voluntarily.

Names, Addresses and Descriptions of Subscribers.

1. John Jones of in the county of merchant.
2. John Smith of in the county of
3. Thomas Green of in the county of
4. John Thompson of in the county of
5. Caleb White of in the county of
6. Andrew Brown of in the county of
7. Cæsar White of in the county of

Dated the 22nd day of November, 1861.

Witness to the above signatures,
A. B., No. 13, Hute Street, Clerkenwell, Middlesex.

FORM C.

MEMORANDUM and ARTICLES of ASSOCIATION of a Company limited by Guarantee, and having a Capital divided into Shares.

Memorandum of Association.

1st. The name of the company is "The Highland Hotel Company, Limited."

2nd. The registered office of the company will be situate in Scotland.

3rd. The objects for which the company is established are "the facilitating travelling in the Highlands of Scotland, by providing hotels and conveyances by sea and by land for the accommodation of travellers, and the doing all such other things as are incidental or conducive to the attainment of the above object."

4th. Every member of the company undertakes to contribute to the assets of the company in the event of the same being wound up during the time that he is a member, or within one year afterwards, for payment of the debts and liabilities of the company contracted before the time at which he ceases to be a member, and the costs, charges and expenses of winding-up the same, and for the adjust-

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ment of the rights of the contributories amongst themselves, such amount as may be required, not exceeding twenty pounds.

We, the several persons whose names and addresses are subscribed, are desirous of being formed into a company, in pursuance of this memorandum of association.

Names, Addresses and Descriptions of Subscribers.

1. John Jones of in the county of merchant.
2. John Smith of in the county of
3. Thomas Green of in the county of
4. John Thompson of in the county of
5. Caleb White of in the county of
6. Andrew Brown of in the county of
7. Cæsar White of in the county of

Dated the 22nd day of November, 1861.

Witness to the above signatures,
A. B., No. 13, Hute Street, Clerkenwell, Middlesex.

Articles of Association to accompany preceding Memorandum of Association.

1. The capital of the company shall consist of five hundred thousand pounds, divided into five thousand shares of one hundred pounds each.

2. The directors may, with the sanction of the company in general meeting, reduce the amount of shares.

3. The directors may, with the sanction of the company in general meeting, cancel any shares belonging to the company.

4. All the articles of Table A. shall be deemed to be incorporated with these articles, and to apply to the company.

We, the several persons whose names and addresses are subscribed, agree to take the number of shares in the capital of the company set opposite our respective names.

Names, Addresses and Descriptions of Subscribers.		Number of Shares taken by each Subscriber.
1. John Jones of	in the county of	200
2. John Smith of	in the county of	25
3. Thomas Green of	in the county of	30
4. John Thompson of	in the county of	40
5. Caleb White of	in the county of	15
6. Andrew Brown of	in the county of	5
7. Cæsar White of	in the county of	10
Total shares taken		325

Dated the 22nd day of November, 1861.

Witness to the above signatures,
A. B., No. 13, Hute Street, Clerkenwell, Middlesex.

FORM D.

MEMORANDUM and ARTICLES of ASSOCIATION of an unlimited Company, having a Capital divided into Shares.

Memorandum of Association.

1st. The name of the company is "The Patent Stereotype Company."

2nd. The registered office of the company will be situate in England.

3rd. The objects for which the company is established are "the working of a patent method of founding and casting stereotype plates, of which method, John Smith, of London, is the sole patentee."

We, the several persons whose names are subscribed, are desirous of being formed into a company, in pursuance of this memorandum of association.

Names, Addresses and Descriptions of Subscribers.

1. John Jones of	in the county of	merchant.
2. John Smith of	in the county of	
3. Thomas Green of	in the county of	
4. John Thompson of	in the county of	
5. Caleb White of	in the county of	
6. Andrew Brown of	in the county of	
7. Abel Brown of	in the county of	

Dated 22nd day of November, 1861.

Witness to the above signatures,
A. B., No. 20, Bond Street, Middlesex.

Articles of Association to accompany the preceding Memorandum of Association.

Capital of the Company.

The capital of the company is two thousand pounds, divided into twenty shares of one hundred pounds each.

Application of Table A.

All the articles of Table A. shall be deemed to be incorporated with these articles, and to apply to the company.

We, the several persons whose names and addresses are subscribed,

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agree to take the number of shares in the capital of the company set opposite our respective names.

Names, Addresses and Descriptions of Subscribers.			Number of Shares taken by Subscribers.
1. John Jones of	in the county of	merchant	1
2. John Smith of	in the county of	.. ..	5
3. Thomas Green of	in the county of	.. ..	2
4. John Thompson of	in the county of	.. ..	2
5. Caleb White of	in the county of	.. ..	3
6. Andrew Brown of	in the county of	.. ..	4
7. Abel Brown of	in the county of	.. ..	1
	Total shares taken ..	.. ..	18

Dated the 22nd day of November, 1861.

Witness to the above signatures,
A. B., No. 20, Bond Street, Middlesex.

FORM E. (as required by the Second Part of the Act).

SUMMARY of CAPITAL and SHARES of the COMPANY, made up to the day of .

Nominal Capital £ divided into Shares of £ each.
Number of Shares taken up to the day of .
There has been called up on each Share £ .
Total Amount of Calls received £ .
Total Amount of Calls unpaid £ .

LIST of Persons holding Shares in the Company on the day of , and of Persons who have held Shares therein at any Time during the Year immediately preceding the said day of , showing their Names and Addresses, and an Account of the Shares so held.

Folio in Register Ledger containing Particulars.	NAMES, ADDRESSES AND OCCUPATIONS.				ACCOUNT OF SHARES.					Remarks.
	Surname.	Christian Name.	Address.	Occupation.	Shares held by existing Members on the day of .	Additional Shares held by existing Members during preceding Year.		Shares held by Persons no longer Members.		
						Number	Date of Transfer.	Number.	Date of Transfer.	

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FORM F.

Licence to hold Lands.

The lords of the committee of privy council appointed for the consideration of matters relating to trade and foreign plantations hereby license the association, limited, to hold the lands hereunder described [*insert description of lands*]. The conditions of this licence are [*insert conditions, if any*] (*a*).

THIRD SCHEDULE (*b*).

First Part.

Date and Chapter of Act.	Title of Act.
21 & 22 Geo. 3, c. 46 (Parliament of Ireland.)	An Act to promote Trade and Manufactures by regulating and encouraging Partnerships.
7 & 8 Vict. c. 110 ..	An Act for the Registration, Incorporation and Regulation of Joint Stock Companies.
7 & 8 Vict. c. 111 ..	An Act for facilitating the winding-up the Affairs of Joint Stock Companies unable to meet their pecuniary Engagements.
7 & 8 Vict. c. 113 ..	An Act to regulate Joint Stock Banks in England.
8 & 9 Vict. c. 98 ..	An Act for facilitating the winding-up the Affairs of Joint Stock Companies in Ireland unable to meet their pecuniary Engagements.
9 & 10 Vict. c. 28 ..	An Act to facilitate the Dissolution of certain Railway Companies.
9 & 10 Vict. c. 75 ..	An Act to regulate Joint Stock Banks in Scotland and Ireland.
10 & 11 Vict. c. 78..	An Act to amend an Act for the Registration, Incorporation and Regulation of Joint Stock Companies.
11 & 12 Vict. c. 45..	An Act to amend the Acts for facilitating the winding-up the Affairs of Joint Stock Companies unable to meet their pecuniary Engagements, and also to facilitate the Dissolution and winding-up of Joint Stock Companies and other Partnerships.
12 & 13 Vict. c. 108..	An Act to amend the Joint Stock Companies Winding-up Act, 1848.
19 & 20 Vict. c. 47..	An Act for the Incorporation and Regulation of Joint Stock Companies and other Associations.
20 & 21 Vict. c. 14..	An Act to amend the Joint Stock Companies Act, 1856.
20 & 21 Vict. c. 49..	An Act to amend the Law relating to Banking Companies.

(*a*) See *ante*, sect. 21, *ante*, p. 189.
(*b*) See sect. 205, *ante*, p. 303.

THIRD SCHEDULE: FIRST PART—*continued.*

Date and Chapter of Act.	Title of Act.
20 & 21 Vict. c. 78..	An Act to amend the Act 7 & 8 Vict. c. 111, for facilitating the winding-up the Affairs of Joint Stock Companies unable to meet their pecuniary Engagements, and also the Joint Stock Companies Winding-up Acts, 1848 and 1849.
20 & 21 Vict. c. 80..	An Act to amend the Joint Stock Companies Act, 1856.
21 & 22 Vict. c. 60..	An Act to amend the Joint Stock Companies Acts, 1856 and 1857, and the Joint Stock Banking Companies Act, 1857.
21 & 22 Vict. c. 91..	An Act to enable Joint Stock Banking Companies to be formed on the principle of Limited Liability.

SECOND PART.

7 & 8 Vict. c. 113, s. 47 (*a*).

Existing companies to have the powers of suing and being sued.

Every company of more than six persons established on the sixth day of May, one thousand eight hundred and forty-four, for the purpose of carrying on the trade or business of bankers within the distance of sixty-five miles from London, and not within the provisions of the act passed in the session holden in the seventh and eighth years of the reign of her present Majesty, chapter one hundred and thirteen, shall have the same powers and privileges of suing and being sued in the name of any one of the public officers of such copartnership as the nominal plaintiff, petitioner or defendant on behalf of such copartnership; and all judgments, decrees and orders made and obtained in any such suit may be enforced in like manner as is provided with respect to such companies carrying on the said trade or business at any place in England exceeding the distance of sixty-five miles from London, under the provisions of an act passed in the seventh year of the reign of king George the fourth, chapter forty-six, intituled "An Act for the better regulating Copartnerships of certain Bankers in England, and for amending so much of an Act of the Thirty-ninth and Fortieth years of the reign of His late Majesty King George the Third, intituled 'An Act for establishing an Agreement with the Governor and Company of the Bank of England for advancing the Sum of Three Millions towards the Supply for the Service of the Year One thousand eight hundred,' as relates to the same," provided that such first-mentioned company shall make out and deliver from time to time to the commissioners of stamps and taxes the several accounts or returns required by the last-mentioned act, and all the provisions of the last-recited act as to such accounts or returns shall be taken to apply to the accounts or returns so made out and delivered by such first-mentioned companies as if they had been originally included in the provisions of the last-recited act (*b*).

(*a*) This is re-enacted by sect. 205 of the principal act, *ante*, p. 303.

(*b*) The statute 7 Geo. 4, c. 46, will be found below.

25 & 26 Vict. c. 89.

20 & 21 Vict. c. 49, part of Section XII.

Power to form banking partnerships of ten persons.

Notwithstanding anything contained in any act passed in the session holden in the seventh and eighth years of the reign of her present Majesty, chapter one hundred and thirteen, and intituled "An Act to regulate Joint Stock Banks in England," or in any other act, it shall be lawful for any number of persons, not exceeding ten, to carry on in partnership the business of banking, in the same manner and upon the same conditions in all respects as any company of not more than six persons could before the passing of this act have carried on such business.

REGULATIONS

FOR

THE MANAGEMENT OF A COMPANY

IN

TABLE (B) OF THE ACT, 19 & 20 VICT. c. 47.

THE stat. 19 & 20 Vict. c. 47, is repealed after 2nd November, 1862, but such repeal does not affect Table (B) annexed thereto, or any part thereof, so far as the same applies to any company existing on the 2nd November, 1862.

Special regulations may be prescribed by articles of association.

By 19 & 20 Vict. c. 47, s. 9, the memorandum of association may be accompanied by or have annexed thereto or indorsed thereon articles of association, signed by the subscribers to the memorandum of association, and prescribing regulations for the company: but if no such regulations are prescribed, or so far as the same do not extend to modify the regulations contained in the table marked (B) in the schedule to that act, such last-mentioned regulations shall, so far as the same are applicable, be deemed to be the regulations of the company, and shall bind the company and the shareholders therein to the same extent as if they had been inserted in articles of association, and such articles had been registered.

TABLE (B).

REGULATIONS FOR MANAGEMENT OF THE COMPANY.

Shares.

(1.) No person shall be deemed to have accepted any share in the company unless he has testified his acceptance thereof by writing under his hand, in such form as the company from time to time directs (*a*).

(*a*) *Acceptance of Shares.*]—In an action for calls by a company registered under 19 & 20 Vict. c. 47, it was proved that the defendant had paid the deposit on the shares in advance to the bankers

19 & 20 Vict. c. 47. Table B.

(2.) The company may from time to time make such calls upon the shareholders in respect of all monies unpaid on their shares as they think fit, provided that twenty-one days' notice at least is given of each call, and each shareholder shall be liable to pay the amount of calls so made to the persons and at the times and places appointed by the company.

(3.) A call shall be deemed to have been made at the time when the resolution authorizing such call was passed.

(4.) If before or on the day appointed for payment any shareholder does not pay the amount of any call to which he is liable, then such shareholder shall be liable to pay interest for the same at the rate of five pounds per cent. per annum from the day appointed for the payment thereof to the time of the actual payment.

(5.) The company may, if they think fit, receive from any of the shareholders willing to advance the same all or any part of the monies due upon their respective shares beyond the sums actually called for; and upon the monies so paid in advance, or so much thereof as from time to time exceeds the amount of the calls then made upon the shares in respect of which such advance has been made, the company may pay interest at such rate as the shareholder paying such sum in advance and the company agree upon.

(6.) If several persons are registered as joint holders of any share, any one of such persons may give effectual receipts for any dividend payable in respect of such share.

(7.) The company may decline to register any transfer of shares made by a shareholder who is indebted to them.

(8.) Every shareholder shall, on payment of such sum, not exceeding one shilling, as the company may prescribe, be entitled to a certificate, under the common seal of the company, specifying the share or shares held by him, and the amount paid up thereon.

(9.) If such certificate is worn out or lost, it may be renewed, on payment of such sum, not exceeding one shilling, as the company may prescribe.

of the company, and had applied for the shares by a letter, which was in a printed form provided by the company, and signed by the defendant, in which he requested the directors to allot him twenty shares, and stated that he thereby agreed to accept the same. In compliance with that letter the number of shares applied for was allotted to the defendant, and the company never directed any other form of acceptance of shares: it was held, that as no other form had been directed by the company, the defendant had by the letter of application sufficiently testified his acceptance of the shares to satisfy this provision. *Bog Lead Mining Company* v. *Montague,* 30 L. J., C. P. 380.

A person had applied for shares in company, paid a deposit, and the shares had been allotted to him; and he had applied for interest warrants and share certificates, which were not given him because he had neglected to fill up, sign and return a form of acceptance sent him on allotment his name; was placed on the register of shareholders, and notice of a call was sent him: he was not liable to calls. *New Brunswick and Canada Railway and Land Co.* v. *Muggeridge,* 4 H. & N. 160; 28 L. J., Ex. 365.

(9a.) The transfer books shall be closed during the fourteen days immediately preceding the ordinary general meeting in each year.

Transmission of Shares.

(10.) The executors or administrators of a deceased shareholder shall be the only person recognized by the company as having any title to his share.

(11.) Any person becoming entitled to a share in consequence of the death, bankruptcy or insolvency of any shareholder, or in consequence of the marriage of any female shareholder or in any way other than by transfer, may be registered as a shareholder upon such evidence being produced as may from time to time be required by the company.

(12.) Any person who has become entitled to a share in any way other than by transfer may, instead of being registered himself, elect to have some person to be named by him registered as a holder of such share.

(13.) The person so becoming entitled shall testify such election by executing to his nominee a deed of transfer of such share.

(14.) The deed of transfer shall be presented to the company, accompanied with such evidence as they may require to prove the title of the transferor, and thereupon the company shall register the transferee as a shareholder.

Forfeiture of Shares.

(15.) If any shareholder fails to pay any call due on the appointed day, the company may at any time thereafter, during such time as the call remains unpaid, serve a notice on him, requiring him to pay such call, together with any interest that may have accrued by reason of such nonpayment.

(16.) The notice shall name a further day, and a place or places, being a place or places at which calls of the company are usually made payable, on and at which such call is to be paid. It shall also state that in the event of nonpayment at the time and place appointed the shares in respect of which such call was made will be liable to be forfeited.

(17.) If the requisitions of any such notice as aforesaid are not complied with, any share in respect of which such notice has been given may be forfeited by a resolution of the directors to that effect.

(18.) Any shares so forfeited shall be deemed to be the property of the company, and may be disposed of in such manner as the company thinks fit.

(19.) Any shareholder whose shares have been forfeited shall notwithstanding be liable to pay to the company all calls owing upon such shares at the time of the forfeiture.

Increase in Capital.

(20.) The company may, with the sanction of the company previously given in general meeting, increase its capital.

(21.) Any capital raised by the creation of new shares shall be considered as part of the original capital, and shall be subject to

19 & 20 Vict. c. 47. Table B.

the same provisions in all respects, whether with reference to the payment of calls or the forfeiture of shares or nonpayment of calls or otherwise, as if it had been part of the original capital.

General Meeting.

(22.) The first general meeting shall be held at such time, not being more than twelve months after the incorporation of the company, and at such place as the directors may determine.

(23.) Subsequent general meetings shall be held at such time and place as may be prescribed by the company in general meeting; and if no other time or place is prescribed, a general meeting shall be held on the first Monday in February in every year, at such place as may be determined by the directors.

(24.) The above-mentioned general meetings shall be called ordinary meetings; all other general meetings shall be called extraordinary.

(25.) The directors may, whenever they think fit, and they shall upon a requisition made in writing by any number of shareholders holding in the aggregate not less than one-fifth part of the shares of the company, convene an extraordinary general meeting.

(26.) Any requisition so made by the shareholders shall express the object of the meeting proposed to be called, and shall be left at the registered office of the company.

(27.) Upon the receipt of such requisition the directors shall forthwith proceed to convene a general meeting. If they do not proceed to convene the same within twenty-one days from the date of the requisition, the requisitionists, or any other shareholders holding the required number of shares, may themselves convene a meeting.

(28.) Seven days' notice at the least, specifying the place, the time, the hour of meeting and purpose for which any general meeting is to be held, shall be given by advertisement, or in such other manner, if any, as may be prescribed by the company.

(29.) Any shareholder may, on giving not less than three days' previous notice, submit any resolution to a meeting beyond the matters contained in the notice given of such meeting.

(30.) The notice required of a shareholder shall be given by leaving a copy of the resolution at the registered office of the company.

(31.) No business shall be transacted at any meeting except the declaration of a dividend, unless a quorum of shareholders is present at the commencement of such business; and such quorum shall be ascertained as follows; that is to say, if the shareholders belonging to the company at the time of the meeting do not exceed ten in number, the quorum shall be five; if they exceed ten there shall be added to the above quorum one for every five additional shareholders up to fifty, and one for every ten additional shareholders after fifty, with this limitation, that no quorum shall in any case exceed forty.

(32.) If within one hour from the time appointed for the meeting the required number of shareholders is not present, the meeting, if convened upon the requisition of the shareholders, shall be dissolved: in any other case it shall stand adjourned to the fol-

lowing day, at the same time and place; and if at such adjourned meeting the required number of shareholders is not present, it shall be adjourned sine die.

(33.) The chairman (if any) of the board of directors shall preside as chairman at every meeting of the company.

(34.) If there is no such chairman, or if at any meeting he is not present at the time of holding the same, the shareholders present shall choose some one of their number to be chairman of such meeting.

(35.) The chairman may, with the consent of the meeting, adjourn any meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.

(36.) At any general meeting, unless a poll is demanded by at least five shareholders, a declaration by the chairman that a resolution has been carried, and an entry to that effect in the book of proceedings of the company, shall be sufficient evidence of the fact, without proof of the number or proportion of the votes recorded in favor of or against such resolution.

(37.) If a poll is demanded in manner aforesaid the same shall be taken in such manner as the chairman directs, and the result of such poll shall be deemed to be the resolution of the company in general meeting.

Votes of Shareholders.

(38.) Every shareholder shall have one vote for every share up to ten; he shall have an additional vote for every five shares beyond the first ten shares up to one hundred, and an additional vote for every ten shares held by him beyond the first hundred shares.

(39.) If any shareholder is a lunatic or idiot he may vote by his committee, *curator bonis* or other legal curator; and if any shareholder is a minor he may vote by his guardian, tutor or curator, or any one of his guardians, tutors or curators, if more than one.

(40.) If one or more persons are jointly entitled to a share or shares, the person whose name stands first in the register of shareholders as one of the holders of such share or shares, and no other, shall be entitled to vote in respect of the same.

(41.) No shareholder shall be entitled to vote at any meeting unless all calls due from him have been paid, nor until he shall have been possessed of his shares three calendar months, unless such shares shall have been acquired or shall have come by bequest, or by marriage, or by succession to an intestate's estate, or by the custom of the city of London, or by any deed of settlement after the death of any person who shall have been entitled for life to the dividends of such shares.

(42.) Votes may be given either personally or by proxies: a proxy shall be appointed in writing under the hand of the appointor, or if such appointor is a corporation, under their common seal.

(43.) No person shall be appointed a proxy who is not a shareholder, and the instrument or mandate appointing him shall be deposited

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at the registered office of the company not less than forty-eight hours before the time of holding the meeting at which he proposes to vote; but no instrument or mandate appointing a proxy shall be valid after the expiration of one month from the date of its execution.

Directors.

(44.) The number of the directors, and the names of the first directors, shall be determined by the subscribers of the memorandum of association.

(45.) Until directors are appointed, the subscribers of the memorandum of association shall for all the purposes of this act be deemed to be directors.

Powers of Directors.

(46.) The business of the company shall be managed by the directors, who may exercise all such powers of the company as are not by this act or by the articles of association, if any, declared to be exerciseable by the company in general meeting, subject nevertheless to any regulations of the articles of association, to the provisions of this act, and to such regulations, being not inconsistent with the aforesaid regulations or provisions, as may be prescribed by the company in general meeting; but no regulation made by the company in general meeting shall invalidate any prior act of the directors which would have been valid if such regulation had not been made.

Disqualification of Directors.

(47.) The office of director shall be vacated,—

If he holds any other office or place of profit under the company;

If he becomes bankrupt or insolvent;

If he is concerned in or participates in the profits of any contract with the company;

If he participates in the profits of any work done for the company:

But the above rules shall be subject to the following exceptions: that no director shall vacate his office by reason of his being a shareholder in any incorporated company which has entered into contracts with or done any work for the company of which he is a director; nevertheless he shall not vote in respect of such contract or work; and if he does so vote his vote shall not be counted, and he shall incur a penalty not exceeding twenty pounds.

Rotation of Directors.

(48.) At the first ordinary meeting after the incorporation of the company the whole of the directors shall retire from office; and at the first ordinary meeting in every subsequent year one-third of the directors for the time being, or if their number is not a multiple of three, then the number nearest to one-third shall retire from office.

(49.) The one-third or other nearest number to retire during the

first and second years ensuing the incorporation of the company shall, unless the directors agree among themselves, be determined by ballot: in every subsequent year the one-third or other nearest number who have been longest in office shall retire.

(50.) A retiring director shall be re-eligible.

(51.) The company at the general meeting at which any directors retire in manner aforesaid shall fill up the vacated offices by electing a like number of persons.

(52.) If at any meeting at which an election of directors ought to take place no such election is made, the meeting shall stand adjourned till the next day, at the same time and place; and if at such adjourned meeting no election takes place, the former directors shall continue to act until new directors are appointed at the first ordinary meeting of the following year.

(53.) The company may from time to time, in general meeting, increase or reduce the number of directors, and may also determine in what rotation such increased or reduced number is to go out of office.

(54.) Any casual vacancy occurring in the board of directors may be filled up by the directors, but any person so chosen shall retain his office so long only as the vacating director would have retained the same if no vacancy had occurred.

Proceedings of Directors.

(55.) The directors may meet together for the dispatch of business, adjourn and otherwise regulate their meetings as they think fit, and determine the quorum necessary for the transaction of business: questions arising at any meeting shall be decided by a majority of votes: in case of an equality of votes the chairman, in addition to his original vote, shall have a casting vote: a director may at any time summon a meeting of the directors.

(56.) The directors may elect a chairman of their meetings, and determine the period for which he is to hold office; but if no such chairman is elected, or if at any meeting the chairman is not present at the time appointed for holding the same, the directors present shall choose some one of their number to be chairman of such meeting.

(57.) The directors may delegate any of their powers to committees consisting of such member or members of their body as they think fit: any committee so formed shall, in the exercise of the powers so delegated, conform to any regulations that may be imposed on them by the directors.

(58.) A committee may elect a chairman of their meetings: if no such chairman is elected, or if he is not present at the time appointed for holding the same, the members present shall choose one of their number to be chairman of such meeting.

(59.) A committee may meet and adjourn as they think proper: questions at any meeting shall be determined by a majority of votes of the members present; and in case of an equal division of votes the chairman shall have a casting vote.

(60.) All acts done by any meeting of the directors, or of a committee of directors, or by any person acting as a director, shall notwithstanding that it be afterwards discovered that there was some defect in the appointment of any such directors or persons

19 & 20 Vict. c. 47. Table B.

acting as aforesaid, or that they or any of them were disqualified, be as valid as if every such person had been duly appointed and was qualified to be a director.

(61.) The directors shall cause minutes to be made in books provided for the purpose,—

(1.) Of all appointments of officers made by the directors;

(2.) Of the names of the directors present at each meeting of directors and committees of directors;

(3.) Of all orders made by the directors and committees of directors; and,

(4.) Of all resolutions and proceedings of meetings of the company and of the directors and committees of directors,

and any such minute as aforesaid, if signed by any person purporting to be the chairman of any meeting of directors, or committee of directors, shall be receivable in evidence without any further proof.

(62.) The company, in general meeting, may, by a special resolution, remove any director before the expiration of his period of office, and appoint another qualified person in his stead. The person so appointed shall hold office during such time only as the director in whose place he is appointed would have held the same if he had not been removed.

Dividends.

(63.) The directors may, with the sanction of the company in general meeting, declare a dividend to be paid to the shareholders in proportion to their shares.

(64.) No dividend shall be payable except out of the profits arising from the business of the company.

(65.) The directors may, before recommending any dividend, set aside out of the profits of the company such sum as they think proper as a reserved fund to meet contingencies, or for equalizing dividends, or for repairing or maintaining the works connected with the business of the company, or any part thereof; and the directors may invest the sum so set apart as a reserved fund upon such securities as they, with the sanction of the company, may select.

(66.) The directors may deduct from the dividends payable to any shareholder all such sums of money as may be due from him to the company on account of calls or otherwise.

(67.) Notice of any dividend that may have been declared shall be given to each shareholder, or sent by post or otherwise to his registered place of abode, and all dividends unclaimed for three years, after having been declared, may be forfeited by the directors for the benefit of the company.

(68.) No dividends shall bear interest as against the company.

Accounts.

(69.) The directors shall cause true accounts to be kept,—

Of the stock in trade of the company;

Of the sums of money received and expended by the company, and the matter in respect of which such receipt and expenditure takes place; and,

Of the credits and liabilities of the company:

Such accounts shall be kept, upon the principle of double entry,

in a cash book, journal and ledger: the books of account shall be kept at the principal office of the company, and, subject to any reasonable restrictions as to the time and manner of inspecting the same that may be imposed by the company in general meeting, shall be open to the inspection of the shareholders during the hours of business.

(70.) Once at the least in every year the directors shall lay before the company in general meeting a statement of the income and expenditure for the past year, made up to a date not more than three months before such meeting.

(71.) The statement so made shall show, arranged under the most convenient heads, the amount of gross income, distinguishing the several sources from which it has been derived, and the amount of gross expenditure, distinguishing the expense of the establishment, salaries and other like matters: every item of expenditure fairly chargeable against the year's income shall be brought into account, so that a just balance of profit and loss may be laid before the meeting; and in cases where any item of expenditure which may in fairness be distributed over several years has been incurred in any one year the whole amount of such item shall be stated, with the addition of the reasons why only a portion of such expenditure is charged against the income of the year.

(72.) A balance sheet shall be made out in every year, and laid before the general meeting of the company, and such balance sheet shall contain a summary of the property and liabilities of the company, arranged under the heads appearing in the form annexed to this table, or as near thereto as circumstances admit.

(73.) A printed copy of such balance sheet shall, seven days previously to such meeting, be delivered at or sent by post to the registered address of every shareholder.

Audit.

(74.) The accounts of the company shall be examined and the correctness of the balance sheet ascertained by one or more auditor or auditors to be elected by the company in general meeting.

(75.) If not more than one auditor is appointed all the provisions herein contained relating to auditors shall apply to him.

(76.) The auditors need not be shareholders in the company: no person is eligible as an auditor who is interested otherwise than as a shareholder in any transaction of the company; and no director or other officer of the company is eligible during his continuance in office.

(77.) The election of auditors shall be made by the company at their ordinary meeting, or, if there are more than one, at their first ordinary meeting in each year.

(78.) The remuneration of the auditors shall be fixed by the company at the time of their election.

(79.) Any auditor shall be re-eligible on his quitting office.

(80.) If any casual vacancy occurs in the office of auditor, the directors shall forthwith call an extraordinary general meeting for the purpose of supplying the same.

19 & 20 Vict. c. 47. Table B.

(81.) If no election of auditors is made in manner aforesaid the board of trade may, on the application of one-fifth in number of the shareholders of the company, appoint an auditor for the current year, and fix the remuneration to be paid to him by the company for his services.

(82.) Every auditor shall be supplied with a copy of the balance sheet, and it shall be his duty to examine the same with the accounts and vouchers relating thereto.

(83.) Every auditor shall have a list delivered to him of all books kept by the company, and he shall at all reasonable times have access to the books and accounts of the company: he may, at the expense of the company, employ accountants or other persons to assist him in investigating such accounts, and he may in relation to such accounts examine the directors or any other officer of the company.

(84.) The auditors shall make a report to the shareholders upon the balance sheet and accounts, and in every such report they shall state whether, in their opinion, the balance sheet is a full and fair balance sheet, containing the particulars required by these regulations, and properly drawn up so as to exhibit a true and correct view of the state of the company's affairs, and in case they have called for explanations or information from the directors, whether such explanations or information have been given by the directors, and whether they have been satisfactory; and such report shall be read, together with the report of the directors, at the ordinary meeting.

Notices.

(85.) Notices requiring to be served by the company upon the shareholders may be served either personally or by leaving the same or sending them through the post in a letter addressed to the shareholders at their registered places of abode.

(86.) All notices directed to be given to the shareholders shall, with respect to any share to which persons are jointly entitled, be given to whichever of the said persons is named first in the register of shareholders; and notice so given shall be sufficient notice to all the proprietors of such share.

(87.) All notices required by this act to be given by advertisement shall be advertised in a newspaper circulating in the district in which the registered office of the company is situate.

Form of Balance Sheet referred to in Table (B), ante, p. 343.

Dr. BALANCE SHEET of the Company made up to 18 . *Cr.*

CAPITAL AND LIABILITIES.			£ s. d.	£ s. d.	PROPERTY AND ASSETS.			£ s. d.	£ s. d.
I. CAPITAL.	1.	Showing: The total amount received from the Shareholders: showing also: (*a.*) The Number of Shares ... ... (*b.*) The Amount paid per Share ... (*c.*) If any Arrears of Calls, the Nature of the Arrear, and the Names of the Defaulters ... ... Any arrears due from any director or officer of the company to be separately stated. (*d.*) The Particulars of any forfeited Shares.			III. PROPERTY held by the Company.	4.	Showing: Immovable Property, distinguishing— (*a.*) Freehold Land ... ... (*b.*) „ Buildings ... ... (*c.*) Leasehold „		
II. DEBTS AND LIABILITIES of the Company.	2.	Showing: The Amount of Loans on Mortgages or Debenture Bonds.				5.	Movable Property, distinguishing— (*d.*) Stock in Trade ... ... (*e.*) Plant ... ... The Cost to be stated with Deductions for Deterioration in Value as charged to the Reserve Fund or Profit and Loss.		
	3.	The Amount of Debts owing by the Company, distinguishing— (*a.*) Debts for which Acceptances have been given. (*b.*) Debts to Tradesmen for Supplies of Stock in Trade or other Articles. (*c.*) Debts for Law Expenses. (*d.*) Debts for Interest on Debentures or other Loans. (*e.*) Unclaimed Dividends. (*f.*) Debts not enumerated above.			IV. DEBTS owing to the Company.	6.	Showing: Debts considered good for which the Company hold Bills or other Securities.		
						7.	Debts considered good for which the Company hold no Security.		
						8.	Debts considered doubtful and bad. Any Debt due from a Director or other Officer of the Company to be separately stated.		
VI. RESERVE FUND.		Showing: The Amount set aside from Profits to meet Contingencies.			V. CASH AND INVESTMENTS.		Showing:		
VII. PROFIT AND LOSS.		The disposable Balance for Payment of Dividend, &c.				9.	The Nature of Investment and Rate of Interest.		
						10.	The Amount of Cash, where lodged, and if bearing Interest.		
CONTINGENT LIABILITIES.		Claims against the Company not acknowledged as Debts. Monies for which the Company is contingently liable.							

THE INDUSTRIAL AND PROVIDENT SOCIETIES ACT, 1862.

25 & 26 Vict. c. 87.

An Act to consolidate and amend the Laws relating to Industrial and Provident Societies.

[7th August, 1862.]

15 & 16 Vict. c. 31.

Whereas by the Industrial and Provident Societies Act, 1852, it is enacted, that it shall be lawful for any number of persons to establish a society under the provisions thereof and of the therein recited act, for the purpose of raising by voluntary subscriptions of the members thereof a fund for attaining any purpose or object for the time being authorized by the laws in force with respect to friendly societies or by the said recited act, by carrying on or exercising in common any labour, trade or handicraft, or several labours, trades or handicrafts, except the working of mines, minerals or quarries beyond the limits of the united kingdom of Great Britain and Ireland, and also except the business of banking, whether in the said united kingdom or elsewhere; and that the said act shall apply to all societies already established for any of the purposes, herein mentioned, so soon as they shall conform to the provisions hereof: and whereas by an act passed in the seventeenth and eighteenth years of her present Majesty, chapter twenty-five, various provisions were made for the better enabling legal proceedings to be carried on in any matter concerning the societies formed under the said Act of 1852: and whereas the last-mentioned act was amended by an act passed in the first session of the nineteenth and twentieth years of her present Majesty, chapter forty: and whereas various societies have been formed and are now carrying on business under the provisions of the said recited acts, and it is desirable to consolidate

17 & 18 Vict. c. 25.

19 & 20 Vict. c. 40.

and amend the laws relating to such societies; be it therefore enacted by, &c., as follows:

Recited acts repealed.

1. The Industrial and Provident Societies Act, 1852, and the said recited acts for the amendment thereof, are hereby repealed from the passing of this act.

As to societies registered under recited acts.

2. All societies registered under the Industrial and Provident Societies Act, 1852, shall be entitled to obtain a certificate of registration on application to the registrar of friendly societies, and for which certificate no fee shall be payable to the registrar.

Constitution of societies under this act (1).

3. Any number of persons, not being less than seven, may establish a society under this act for the purpose of carrying on any labour, trade or handicraft, whether wholesale or retail (2), except the working of mines and quarries, and except the business of banking, and of applying the profits for any purposes allowed by the Friendly Societies Acts (3), or otherwise permitted by law.

Rules.

4. The rules of every such society shall contain provisions in respect of the several matters mentioned in the schedule annexed to this act.

Registration of society.

5. Two copies of the rules shall be forwarded to the registrar of friendly societies of England, Scotland or Ireland, according to the place where the office of the society is situate, and shall be dealt with by him in the manner provided by the Friendly Societies Act, 1855 (4); and he shall thereupon give his certificate of registration, and such certificate shall in all cases be conclusive evidence that the society has been duly registered, and thereupon the members of such society shall become a body corporate, by the name therein described, having a perpetual succession and a common seal, with power to hold lands and buildings, with limited liability (5).

Certificate to vest all property in society now held in trust for society.

6. The certificate of registration shall vest in the society all the property that may at the time be vested in any person in trust for the society; and all legal proceedings then pending

(1) Compare 25 & 26 Vict. c. 89, s. 6, *ante*, p. 179.

(2) A benefit building society cannot be registered under this act. *Per* L. J. Turner, *Midland Benefit Building Society*, 33 L. J., Ch. 739.

(3) The acts here referred to are 18 & 19 Vict. c. 63, 21 & 22 Vict. c. 101, and 23 & 24 Vict. c. 58.

(4) 18 & 19 Vict. c. 63, s. 26.

(5) Compare 25 & 26 Vict. c. 86, s. 18, *ante*, p. 186.

25 & 26 Vict. c. 87, s. 6.

by or against any such trustee or other officer on account of the society may be prosecuted by or against the society in its registered name without abatement (1).

Copy of rules to be delivered on demand.

7. A copy of the rules shall be delivered by the society to every person, on demand, on payment of a sum not exceeding one shilling.

No society to be registered by same name as that of any existing society.

8. No society shall be registered under a name identical with that by which any other existing society has been registered, or so nearly resembling such name as to be likely to deceive the members or the public, and the word "limited" shall be the last word in the name of every society registered under this act (2).

Members' interests limited to 200*l.*

9. No member shall be entitled, in any society registered under this act, to hold or claim any interest exceeding the sum of two hundred pounds.

Publication of name by a society (3).

10. Every society registered under this act shall paint or affix, and shall keep painted or affixed, its name on the outside of every office or place in which the business of the society is carried on, in a conspicuous position, in letters easily legible, and shall have its name engraved in legible characters on its seal, and shall have its name mentioned in legible characters in all notices, advertisements and other official publications of such society, and in all bills of exchange, promissory notes, indorsements, cheques and orders for money or goods purport-

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(1) A bond given to trustees for an industrial society registered under the Provident and Industrial Societies Act, 1852, was, by the certificate of registration under this act, vested in the society, and the society could sue on it for breaches of the condition subsequent to re-registration. *Queensbury Industrial Society* v. *Pickles*, L. R., 1 Ex. 1; 35 L. J., Ex. 1.

Proceedings cannot be commenced after re-registration against the company for claims then pending. *Linton* v. *Blakeney Co-operative Industrial Society*, 2 H. & C. 853.

The old trustees cannot be sued. *Toutill* v. *Douglas*, 35 L. J., C. B. 66.

The individual shareholders are liable in the same way as members of an ordinary partnership, as the former act was repealed (*ante*, sect. 1). *Dean* v. *Millard*, 16 C. B., N. S. 19; 32 L. J., C. P. 282; 11 W. R. 913.

Compare *Fountain's Case*, *post*, p. 351.

(2) See 25 & 26 Vict. c. 89, s. 20, *ante*, p. 188.

(3) See 25 & 26 Vict. c. 89, s. 41, *ante*, p. 198

ing to be signed by on behalf of such company, and in all bills of parcels, invoices, receipts and letters of credit of the society.

Penalties on non-publication of name, &c. (1).

11. If any society under this act does not paint or affix, and keep painted or affixed, its name in manner directed by this act, it shall be liable to a penalty not exceeding five pounds for not so painting or affixing its name, and for every day during which such name is not so kept painted or affixed; and if any officer of such society or any person on its behalf uses any seal purporting to be a seal of the society whereon its name is not so engraven as aforesaid, or issues or authorizes the issue of any notice, advertisement or other official publication of such society, or signs or authorizes to be signed on behalf of such society any bill of exchange, promissory note, indorsement, cheque, order for money or goods, or issues or authorizes to be issued any bill of parcels, invoice, receipt or letter of credit of the society, wherein its name is not mentioned in manner aforesaid, he shall be liable to a penalty of fifty pounds, and shall further be personally liable to the holder of any such bill of exchange, promissory note, cheque or order for money or goods for the amount thereof, unless the same is duly paid by the society.

Every society to have a registered office. Penalty on default.

12. Every society under this act shall have a registered office to which all communications and notices may be addressed: if any society registered under this act carries on business without having such an office, it shall incur a penalty not exceeding five pounds for every day during which business is so carried on.

Notice of situation of registered office.

13. Notice of the situation of such registered office, and of any change therein, shall be given to the registrar, and recorded by him: until such notice is given the society shall not be deemed to have complied with the provisions of this act.

Signature and effect of rules.

14. The rules of every society registered under this act shall bind the society, and the members thereof, to the same extent as if each member had subscribed his name and affixed his seal thereto, and there were in such rules contained a covenant on the part of himself, his heirs, executors and administrators, to conform to such rules subject to the provisions of this act; and all monies payable by any member to the society in pursuance

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(1) See 25 & 26 Vict. c. 89, s. 42, *ante*, p. 199.

25 & 26 Vict. c. 87, s. 14.

of such rules shall be deemed to be a debt due from such member to the society.

Application of Friendly Societies Acts to this act.

15. The provisions of the Friendly Societies Acts shall apply to societies registered under this act in the following particulars:

Exemption from stamp duties and income tax;
Settlements of disputes by arbitration or justices;
Compensation to members unjustly excluded;
Power of justices or county courts in case of fraud;
Jurisdiction of the registrar.

Power to member to nominate persons into whose name his interest may be transferred at his death.

16. The provisions of the Friendly Societies Act, 1854, whereby a member of any society registered thereunder is allowed to nominate any persons to whom his investment in such society shall be paid, shall extend, in the case of societies registered under this act, to allow any member thereof to nominate any persons into whose name his interest in such society at his decease shall be transferred: provided nevertheless, that any such society may, in lieu of making such transfer, elect to pay to any person so nominated the full value of such interest.

As to the winding-up of societies (1).

17. Any society registered under this act may be wound up either by the court or voluntarily, in the same manner and under the same circumstances under and in which any company may be wound up under any acts or act for the time being in force for winding-up companies; and all the provisions of such acts or act with respect to winding-up shall apply to such society, with this exception, that the court having jurisdiction in the winding-up shall be the county court of the district in which the office of the society is situated (2).

Dissolution of society not to prevent winding-up of its affairs.

18. In case of the dissolution of any such society, such society shall nevertheless be considered as subsisting, and be in all respects subject to the provisions of this act, so long and so

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(1) See 25 & 26 Vict. c. 89, s. 74, *ante*, p. 216.

As to whether this section ousts the jurisdiction of the Court of Chancery in winding-up companies governed by this act, see *ante*, p. 296.

(2) The rules of the court of chancery for winding-up companies have been adopted by the county courts under this act, see *post*.

For scale of costs allowed, see *post*.

For fees relative to winding-up proceedings in the county court under this section, see *post*.

far as any matters relating to the same remain unsettled, to the intent that such society may do all things necessary to the winding-up of the concerns thereof, and that it may be sued and sue, under the provisions of this act, in respect of all matters relating to such society.

Provisions of Joint Stock Companies Acts to apply.

19. The provisions of the Joint Stock Companies Acts as to bills of exchange and the admissibility of the register of shares in evidence shall apply to all societies registered under this act (1).

Liability of present and past members of society (2).

20. In the event of a society registered under this act being wound up, every present and past member of such society shall be liable to contribute to the assets of the society to an amount sufficient for payment of the debts and liabilities of the society, and the costs, charges and expenses of the winding-up, and for the payment of such sums as may be required for the adjustment of the rights of the contributories amongst themselves, with the qualifications following, (that is to say,)

(1.) No past member shall be liable to contribute to the assets of the society if he has ceased to be a member for a period of one year or upwards prior to the commencement of the winding-up;

(2.) No past member shall be liable to contribute in respect of any debt or liability of the society contracted after the time at which he ceased to be a member;

(3.) No past member shall be liable to contribute to the assets of the society unless it appears to the court that the existing members are unable to satisfy the contributions required to be made by them in order to satisfy all just demands upon such society;

(4.) No contribution shall be required from any member exceeding the amount (if any) unpaid on the shares in respect of which he is liable as a past or present member (3).

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(1) See 25 & 26 Vict. c. 89, ss. 37, 47, *ante*, pp. 195, 201.

(2) Compare 25 & 26 Vict. c. 89, s. 38, *ante*, p. 195.

(3) F. was the holder of fully paid-up shares in an industrial society, formed with unlimited liability under the Industrial and Provident Societies Act, 1852. The society was registered under this act for the purpose of being wound up. It was held that F.'s name must be omitted from the list of contributories. *Sheffield Foresters' Industrial Society, Fountain's Case*, 34 L. J., Ch. 593.

25 & 26 Vict. c. 87, s. 21.

Society may be constituted under companies acts.

21. Any society registered under this act may be constituted a company under the companies acts, by conforming to the provisions set forth in such act, and thereupon shall cease to retain its registration under this act.

Members may inspect books.

22. Every person or member having an interest in the funds of any society registered under this act may inspect the books and the names of the members at all reasonable hours at the office of the society (1).

Sheriff's jurisdiction in Scotland.

23. The sheriff in Scotland shall within his county have the like jurisdiction as is hereby given to the judge of the county court in any matter arising under this act.

Annual returns to be prepared as registrar may direct.

24. A general statement of the funds and effects of any society registered under this act shall be transmitted to the registrar once in every year, and shall exhibit fully the assets and liabilities of the society, and shall be prepared and made out within such period, and in such form, and shall comprise such particulars as the registrar shall from time to time require; and the registrar shall have authority to require such evidence as he may think expedient of all matters required to be done, and of all documents required to be transmitted to him under this act; and every member of or any depositor in any such society shall be entitled to receive, on application to the treasurer or secretary of that society, a copy of such statement, without making any payment for the same.

Recovery of penalties.

25. All penalties imposed by this act, or by the rules of any society registered under this act, may be recovered in a summary manner before two justices, as directed by an act passed in the eleventh and twelfth years of the reign of her present Majesty Queen Victoria, chapter forty-three, intituled "An Act to facilitate the Performance of the Duties of Justices of the Peace out of Sessions within England and Wales with respect to summary Convictions and Orders" (2).

Short title.

26. This act may be cited as "The Industrial and Provident Societies Act, 1862."

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(1) See 25 & 26 Vict. c. 89, s. 32, *ante*, p. 193.
(2) See 25 & 26 Vict. c. 89, s. 65, *ante*, p. 208.

SCHEDULE.

SCHEDULE of Matters to be provided for in the Rules (*a*).

1. Object and name and place of office of the society, which must in all cases be registered as one of limited liability.
2. Terms of admission of members.
3. Mode of holding meetings and right of voting, and of making or altering rules.
4. Determination whether the shares shall be transferable, and in case it be determined that the shares shall be transferable, provision for the form of transfer and registration of shares and for the consent of the committee of management and confirmation by the general meeting of the society; and in case shares shall not be transferable, provision for paying to members balance due to them on withdrawing from the society.
5. Provision for the audit of accounts.
6. Power to invest part of capital in another society; provided that no such investment be made in any other society not registered under this act, or the Joint Stock Companies Act, as a society or company with limited liability.
7. Power and mode of withdrawing from the society, and provisions for the claims of executors, administrators or assigns of members.
8. Mode of application of profits.
9. Appointment of managers and other officers, and their respective powers and remuneration.

(*a*) See *ante*, s. 4, p. 347.

THE COMPANIES ACT, 1867.

30 & 31 Vict. c. 131.

An Act to amend "The Companies Act, 1862."

[20th August, 1867.]

Be it enacted by the Queen's most excellent Majesty by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, as follows:

Preliminary.

Short title.

1. This act may be cited for all purposes as "The Companies Act, 1867."

Act to be construed as one with 25 & 26 Vict. c. 89.

2. The Companies Act, 1862, is hereinafter referred to as "the principal act;" and the principal act and this act are hereinafter distinguished as and may be cited for all purposes as "The Companies Acts, 1862 and 1867;" and this act shall, so far as is consistent with the tenor thereof, be construed as one with the principal act; and the expression "this act" in the principal act, and any expression referring to the principal act which occurs in any act or other document, shall be construed to mean the principal act as amended by this act.

Commencement of act.

3. This act shall come into force on the first day of September, one thousand eight hundred and sixty-seven, which date is hereinafter referred to as the commencement of this act.

Unlimited Liability of Directors.

Company may have directors with unlimited liability.

4. Where after the commencement of this act a company is formed as a limited company under the principal act, the liability of the directors or managers of such company, or the

managing director, may, if so provided by the memorandum of association, be unlimited.

Liability of director, past and present, where liability is unlimited.

5. The following modifications shall be made in the thirty-eighth section of the principal act, with respect to the contributions to be required in the event of the winding-up of a limited company under the principal act, from any director or manager whose liability is, in pursuance of this act, unlimited:

(1.) Subject to the provisions hereinafter contained, any such director or manager, whether past or present, shall, in addition to his liability (if any) to contribute as an ordinary member, be liable to contribute as if he were at the date of the commencement of such winding-up a member of an unlimited company:

(2.) No contribution required from any past director or manager who has ceased to hold such office for a period of one year or upwards prior to the commencement of the winding-up shall exceed the amount (if any) which he is liable to contribute as an ordinary member of the company:

(3.) No contribution required from any past director or manager in respect of any debt or liability of the company contracted after the time at which he ceased to hold such office shall exceed the amount (if any) which he is liable to contribute as an ordinary member of the company:

(4.) Subject to the provisions contained in the regulations of the company no contribution required from any director or manager shall exceed the amount (if any) which he is liable to contribute as an ordinary member, unless the court deems it necessary to require such contribution in order to satisfy the debts and liabilities of the company, and the costs, charges and expenses of the winding-up.

Director with unlimited liability may have set-off as under sect. 101 of 25 & 26 Vict. c. 89.

6. In the event of the winding-up of any limited company, the court, if it think fit, may make to any director or manager of such company whose liability is unlimited the same allowance by way of set-off as under the one hundred and first section of the principal act it may make to a contributory where the company is not limited.

30 & 31 Vict. c. 131, s. 7.

Notice to be given to director on his election that his liability will be unlimited.

7. In any limited company in which, in pursuance of this act, the liability of a director or manager is unlimited, the directors or managers of the company (if any), and the member who proposes any person for election or appointment to such office, shall add to such proposal a statement that the liability of the person holding such office will be unlimited, and the promoters, directors, managers and secretary (if any) of such company, or one of them, shall, before such person accepts such office or acts therein, give him notice in writing that his liability will be unlimited.

If any director, manager or proposer make default in adding such statement, or if any promoter, director, manager or secretary make default in giving such notice, he shall be liable to a penalty not exceeding one hundred pounds, and shall also be liable for any damage which the person so elected or appointed may sustain from such default, but the liability of the person elected or appointed shall not be affected by such default.

Existing limited company may, by special resolution, make liability of directors unlimited.

8. Any limited company under the principal act, whether formed before or after the commencement of this act, may, by a special resolution, if authorized so to do by its regulations, as originally framed or as altered by special resolution, from time to time modify the conditions contained in its memorandum of association so far as to render unlimited the liability of its directors or managers, or of the managing director; and such special resolution shall be of the same validity as if it had been originally contained in the memorandum of association, and a copy thereof shall be embodied in or annexed to every copy of the memorandum of association which is issued after the passing of the resolution, and any default in this respect shall be deemed to be a default in complying with the provisions of the fifty-fourth section of the principal act, and shall be punished accordingly.

Reduction of Capital and Shares (1).

Power to company to reduce capital.

9. Any company limited by shares may, by special resolution, so far modify the conditions contained in its memorandum of

(1) A power to reduce the amount of capital was taken away by the registration of a company with limited liability. *Droitwitch Patent Salt Co.* v. *Curzon*, 37 L. J., Ex. 2; L. R., 3 Ex. 35.

For the mode of procedure in respect to the reduction of capital and shares, see General Order of April, 1868, rules 2—20, *post*.

association, if authorized so to do by its regulations as originally framed or as altered by special resolution, as to reduce its capital; but no such resolution for reducing the capital of any company shall come into operation until an order of the court is registered by the registrar of joint stock companies, as is hereinafter mentioned.

Company to add "and reduced" to its name for a limited period.

10. The company shall, after the date of the passing of any special resolution for reducing its capital, add to its name, until such date as the court may fix (1), the words "and reduced," as the last words in its name, and those words shall, until such date, be deemed to be part of the name of the company within the meaning of the principal act.

Company to apply to the court for an order confirming reduction.

11. A company which has passed a special resolution for reducing its capital may apply to the court by petition for an order confirming the reduction, and on the hearing of the petition the court, if satisfied that with respect to every creditor of the company who under the provisions of this act is entitled to object to the reduction, either his consent to the reduction has been obtained, or his debt or claim has been discharged or has determined, or has been secured as hereinafter provided, may make an order confirming the reduction on such terms and subject to such conditions as it deems fit.

Definition of the court.

12. The expression "the court" shall in this act mean the court which has jurisdiction to make an order for winding-up the petitioning company, and the eighty-first and eighty-third sections of the principal act shall be construed as if the term "winding-up" in those sections included proceedings under this act, and the court may in any proceedings under this act make such order as to costs as it deems fit.

Creditors may object to reduction, and list of objecting creditors to be settled by the court.

13. Where a company purposes to reduce its capital, every creditor of the company who at the date fixed by the court is entitled to any debt or claim which, if that date were the commencement of the winding-up of the company, would be admissible in proof against the company, shall be entitled to object to the proposed reduction, and to be entered in the list of creditors who are so entitled to object.

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(1) Three months was considered a proper time. *Sharp, Stewart & Co.*, L. R., 5 Eq. 155; *York Street Flax Spinning Co.*, 17 W. R. 816. See General Order of April, 1868, rule 20, *post.*

30 & 31 Vict. c. 131, s. 13.

The court shall settle a list of such creditors, and for that purpose shall ascertain as far as possible without requiring an application from any creditor the names of such creditors and the nature and amount of their debts or claims, and may publish notices fixing a certain day or days within which creditors of the company who are not entered on the list are to claim to be so entered or to be excluded from the right of objecting to the proposed reduction.

Court may dispense with consent of creditor on security being given for his debt.

14. Where a creditor whose name is entered on the list of creditors, and whose debt or claim is not discharged or determined, does not consent to the proposed reduction, the court may (if it think fit) dispense with such consent on the company securing the payment of the debt or claim of such creditor by setting apart and appropriating, in such manner as the court may direct, a sum of such amount as is hereinafter mentioned; (that is to say,)

(1.) If the full amount of the debt or claim of the creditor is admitted by the company, or, though not admitted, is such as the company are willing to set apart and appropriate, then the full amount of the debt or claim shall be set apart and appropriated:

(2.) If the full amount of the debt or claim of the creditor is not admitted by the company, and is not such as the company are willing to set apart and appropriate, or if the amount is contingent or not ascertained, then the court may, if it think fit, inquire into and adjudicate upon the validity of such debt or claim, and the amount for which the company may be liable in respect thereof, in the same manner as if the company were being wound up by the court, and the amount fixed by the court on such inquiry and adjudication shall be set apart and appropriated.

Order and minute to be registered.

15. The registrar of joint stock companies upon the production to him of an order of the court confirming the reduction of the capital of a company, and the delivery to him of a copy of the order and of a minute (approved by the court), showing with respect to the capital of the company, as altered by the order, the amount of such capital, the number of shares in which it is to be divided, and the amount of each share, shall register the order and minute, and on the registration the special resolution confirmed by the order so registered shall take effect.

Notice of such registration shall be published in such manner as the court may direct.

The registrar shall certify under his hand the registration of the order and minute, and his certificate shall be conclusive evidence that all the requisitions of this act with respect to the reduction of capital have been complied with, and that the capital of the company is such as is stated in the minute.

Minute to form part of memorandum of association.

16. The minute when registered shall be deemed to be substituted for the corresponding part of the memorandum of association of the company, and shall be of the same validity and subject to the same alterations as if it had been originally contained in the memorandum of association; and, subject as in this act mentioned, no member of the company, whether past or present, shall be liable in respect of any share to any call or contribution exceeding in amount the difference (if any) between the amount which has been paid on such share and the amount of the share as fixed by the minute.

Saving of rights of creditors who are ignorant of proceedings.

17. If any creditor who is entitled in respect of any debt or claim to object to the reduction of the capital of a company under this act is, in consequence of his ignorance of the proceedings taken with a view to such reduction, or of their nature and effect with respect to his claim, not entered on the list of creditors, and after such reduction the company is unable, within the meaning of the eightieth section of the principal act, to pay to the creditor the amount of such debt or claim, every person who was a member of the company at the date of the registration of the order and minute relating to the reduction of the capital of the company, shall be liable to contribute for the payment of such debt or claim an amount not exceeding the amount which he would have been liable to contribute if the company had commenced to be wound up on the day prior to such registration, and on the company being wound up, the court on the application of such creditor, and on proof that he was ignorant of the proceedings taken with a view to the reduction, or of their nature and effect with respect to his claim, may, if it think fit, settle a list of such contributories accordingly, and make and enforce calls and orders on the contributories settled on such list in the same manner in all respects as if they were ordinary contributories in a winding-up; but the provisions of this section shall not affect the rights of the contributories of the company among themselves.

30 & 31 Vict. c. 131, s. 18.

Copy of registered minute.

18. A minute when registered shall be embodied in every copy of the memorandum of association issued after its registration; and if any company makes default in complying with the provisions of this section it shall incur a penalty not exceeding one pound for each copy in respect of which such default is made, and every director and manager of the company who shall knowingly and wilfully authorize or permit such default shall incur the like penalty.

Penalty on concealment of name of creditor.

19. If any director, manager or officer of the company wilfully conceals the name of any creditor of the company who is entitled to object to the proposed reduction, or wilfully misrepresents the nature or amount of the debt or claim of any creditor of the company, or if any director or manager of the company aids or abets in or is privy to any such concealment or misrepresentation as aforesaid, every such director, manager or officer shall be guilty of a misdemeanor.

Power to make rules extended to making rules concerning matters in this act.

20. The powers of making rules concerning winding-up conferred by the one hundred and seventieth, one hundred and seventy-first, one hundred and seventy-second, and one hundred and seventy-third sections of the principal act shall respectively extend to making rules concerning matters in which jurisdiction is by this act given to the court which has the power of making an order to wind up a company, and until such rules are made the practice of the court in matters of the same nature shall, so far as the same is applicable, be followed.

Subdivision of Shares (1).

Shares may be divided into shares of smaller amount.

21. Any company limited by shares may by special resolution so far modify the conditions contained in its memorandum of association, if authorized so to do by its regulations as originally framed or as altered by special resolution, as by subdivision of its existing shares or any of them, to divide its capital, or any part thereof, into shares of smaller amount than is fixed by its memorandum of association:

Provided, that in the subdivision of the existing shares the proportion between the amount which is paid and the amount (if any) which is unpaid on each share of reduced amount shall

(1) By the combined effect of sections 8 and 12 of the principal act, the reduction of shares was prohibited. *Financial Corp., Feiling's Case*, L. R., 2 Ch. 714; 36 L. J., Ch. 87, 695.

be the same as it was in the case of the existing share or shares from which the share of reduced amount is derived.

Special resolution to be embodied in memorandum of association.

22. The statement of the number and amount of the shares into which the capital of the company is divided contained in every copy of the memorandum of association issued after the passing of any such special resolution, shall be in accordance with such resolution; and any company which makes default in complying with the provisions of this section shall incur a penalty not exceeding one pound for each copy in respect of which such default is made; and every director and manager of the company who knowingly or wilfully authorizes or permits such default shall incur the like penalty.

Associations not for Profit.

Special provisions as to associations formed for purposes not of gain.

23. Where any association is about to be formed under the principal act as a limited company, if it proves to the board of trade that it is formed for the purpose of promoting commerce, art, science, religion, charity or any other useful object, and that it is the intention of such association to apply the profits, if any, or other income of the association, in promoting its objects, and to prohibit the payment of any dividend to the members of the association, the board of trade may by licence, under the hand of one of the secretaries or assistant secretaries, direct such association to be registered with limited liability, without the addition of the word limited to its name, and such association may be registered accordingly, and upon registration shall enjoy all the privileges and be subject to the obligations by this act imposed on limited companies, with the exceptions that none of the provisions of this act that require a limited company to use the word limited as any part of its name, or to publish its name, or to send a list of its members, directors or managers to the registrar, shall apply to an association so registered.

The licence by the board of trade may be granted upon such conditions and subject to such regulations as the board think fit to impose, and such conditions and regulations shall be binding on the association, and may, at the option of the said board, be inserted in the memorandum and articles of association, or in both or one of such documents.

30 & 31 Vict. c. 131, s. 24.

Calls upon Shares.

Company may have some shares fully paid and others not.

24. Nothing contained in the principal act shall be deemed to prevent any company under that act, if authorized by its regulations as originally framed or as altered by special resolution, from doing any one or more of the following things; namely:—

(1.) Making arrangements on the issue of shares for a difference between the holders of such shares in the amount of calls to be paid, and in the time of payment of such calls:

(2.) Accepting from any member of the company who assents thereto the whole or a part of the amount remaining unpaid on any share or shares held by him, either in discharge of the amount of a call payable in respect of any other share or shares held by him or without any call having been made:

(3.) Paying dividend in proportion to the amount paid up on each share in cases where a larger amount is paid up on some shares than on others.

Manner in which shares are to be issued and held.

25. Every share in any company shall be deemed and taken to have been issued and to be held subject to the payment of the whole amount thereof in cash, unless the same shall have been otherwise determined by a contract duly made in writing, and filed with the registrar of joint stock companies at or before the issue of such shares.

Transfer of Shares (1).

Transfer may be registered at request of transferor.

26. A company shall on the application of the transferor of any share or interest in the company enter in its register of members the name of the transferee of such share or interest, in the same manner and subject to the same conditions as if the application for such entry were made by the transferee.

Share Warrants to Bearer.

Warrant of limited shares fully paid up may be issued in name of bearer.

27. In the case of a company limited by shares the company, if authorized so to do by its regulations as originally framed or as altered by special resolution, and subject to the provisions of such regulations, may, with respect to any share which is fully paid up, or with respect to stock, issue under

(1) See *ante*, pp. 120, 149, and C. A. 1862, s. 22, p. 190.

their common seal a warrant stating that the bearer of the warrant is entitled to the share or shares or stock therein specified, and may provide, by coupons or otherwise, for the payment of the future dividends on the share or shares or stock included in such warrant, hereinafter referred to as a share warrant.

Effect of share warrant.

28. A share warrant shall entitle the bearer of such warrant to the shares or stock specified in it, and such shares or stock may be transferred by the delivery of the share warrant.

Re-registration of bearer of a share warrant in the register.

29. The bearer of a share warrant shall, subject to the regulations of the company, be entitled, on surrendering such warrant for cancellation, to have his name entered as a member in the register of members, and the company shall be responsible for any loss incurred by any person by reason of the company entering in its register of members the name of any bearer of a share warrant in respect of the shares or stock specified therein without the share warrant being surrendered and cancelled.

Regulations of the company may make the bearer of a share warrant a member.

30. The bearer of a share warrant may, if the regulations of the company so provide, be deemed to be a member of the company within the meaning of the principal act, either to the full extent or for such purposes as may be prescribed by the regulations:

Provided that the bearer of a share warrant shall not be qualified in respect of the shares or stock specified in such warrant for being a director or manager of the company in cases where such a qualification is prescribed by the regulations of the company.

Entries in register where share warrant issued.

31. On the issue of a share warrant in respect of any share or stock the company shall strike out of its register of members the name of the member then entered therein as holding such share or stock as if he had ceased to be a member, and shall enter in the register the following particulars:—

(1.) The fact of the issue of the warrant:

(2.) A statement of the shares or stock included in the warrant, distinguishing each share by its number:

(3.) The date of the issue of the warrant:

And until the warrant is surrendered the above particulars shall be deemed to be the particulars which are required by the twenty-fifth section of the principal act to be entered in the register of members of a company; and on the surrender of a

30 & 31 Vict. c. 131, s. 31.

warrant the date of such surrender shall be entered as if it were the date at which a person ceased to be a member.

Particulars to be contained in annual summary.

32. After the issue by the company of a share warrant the annual summary required by the twenty-sixth section of the principal act shall contain the following particulars :—the total amount of shares or stock for which share warrants are outstanding at the date of the summary, and the total amount of share warrants which have been issued and surrendered respectively since the last summary was made, and the number of shares or amount of stock comprised in each warrant.

Stamps on share warrants.

33. There shall be charged on every share warrant a stamp duty of an amount equal to three times the amount of the *ad valorem* stamp duty which would be chargeable on a deed transferring the share or shares or stock specified in the warrant, if the consideration for the transfer were the nominal value of such share or shares or stock.

Penalties on persons committing forgery.

34. Whosoever forges or alters, or offers, utters, disposes of or puts off, knowing the same to be forged or altered, any share warrant or coupon, or any document purporting to be a share warrant or coupon, issued in pursuance of this act, or demands or endeavours to obtain or receive any share or interest of or in any company under the principal act, or to receive any dividend or money payable in respect thereof, by virtue of any such forged or altered share warrant, coupon or document, purporting as aforesaid, knowing the same to be forged or altered, with intent in any of the cases aforesaid to defraud, shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the court, to be kept in penal servitude for life, or for any term not less than five years, or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement.

Penalties on persons falsely personating owner of shares.

35. Whosoever falsely and deceitfully personates any owner of any share or interest of or in any company, or of any share warrant or coupon issued in pursuance of this act, and thereby obtains or endeavours to obtain any such share or interest, or share warrant or coupon, or receives or endeavours to receive any money due to any such owner, as if such offender were the true and lawful owner, shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the court, to

be kept in penal servitude for life or for any term not less than five years, or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement.

Penalties on persons engraving plates, &c.

36. Whosoever, without lawful authority or excuse, the proof whereof shall be on the party accused, engraves or makes upon any plate, wood, stone or other material any share warrant or coupon purporting to be a share warrant or coupon issued or made by any particular company under and in pursuance of this act, or to be a blank share warrant or coupon issued or made as aforesaid, or to be a part of such a share warrant or coupon, or uses any such plate, wood, stone or other material for the making or printing any such share warrant or coupon, or any such blank share warrant or coupon, or any part thereof respectively, or knowingly has in his custody or possession any such plate, wood, stone or other material, shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the court, to be kept in penal servitude for any term not exceeding fourteen years and not less than five years, or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement.

Contracts (1).

Contracts, how made.

37. Contracts on behalf of any company under the principal act may be made as follows ; (that is to say,)

(1.) Any contract which if made between private persons would be by law required to be in writing, and if made according to English law to be under seal, may be made on behalf of the company in writing under the common seal of the company, and such contract may be in the same manner varied or discharged :

(2.) Any contract which if made between private persons would be by law required to be in writing, and signed by the parties to be charged therewith, may be made on behalf of the company in writing signed by any person acting under the express or implied authority of the company, and such contract may in the same manner be varied or discharged :

(1) See *ante*, Chap. III., par. 18 (4), p. 76.

30 & 31 Vict. c. 131, s. 37.

(3.) Any contract which if made between private persons would by law be valid although made by parol only, and not reduced into writing, may be made by parol on behalf of the company by any person acting under the express or implied authority of the company, and such contract may in the same way be varied or discharged:

And all contracts made according to the provisions herein contained shall be effectual in law, and shall be binding upon the company and their successors and all other parties thereto, their heirs, executors, or administrators, as the case may be.

Prospectus, &c. to specify dates and names of parties to any contract made prior to issue of such prospectus, &c.

38. Every prospectus of a company, and every notice inviting persons to subscribe for shares in any joint stock company, shall specify the dates and the names of the parties to any contract entered into by the company, or the promoters, directors, or trustees thereof, before the issue of such prospectus or notice, whether subject to adoption by the directors or the company, or otherwise; and any prospectus or notice not specifying the same shall be deemed fraudulent on the part of the promoters, directors, and officers of the company knowingly issuing the same, as regards any person taking shares in the company on the faith of such prospectus, unless he shall have had notice of such contract.

Meetings.

Company to hold meeting within four months after registration.

39. Every company formed under the principal act after the commencement of this act shall hold a general meeting within four months after its memorandum of association is registered; and if such meeting is not held the company shall be liable to a penalty not exceeding five pounds a day for every day after the expiration of such four months until the meeting is held; and every director or manager of the company, and every subscriber of the memorandum of association, who knowingly authorizes or permits such default, shall be liable to the same penalty.

Winding-up.

Contributory when not qualified to present winding-up petition.

40. No contributory of a company under the principal act shall be capable of presenting a petition for winding-up such company unless the members of the company are reduced in number to less than seven, or unless the shares in respect of

which he is a contributory, or some of them, were either originally allotted to him or have been held by him, and registered in his name, for a period of at least six months during the eighteen months previously to the commencement of the winding-up, or have devolved upon him through the death of a former holder:

Provided that where a share has during the whole or any part of the six months been held by or registered in the name of the wife of a contributory either before or after her marriage, or by or in the name of any trustee or trustees for such wife or for the contributory, such share shall for the purposes of this section be deemed to have been held by and registered in the name of the contributory.

Winding-up may be referred to county court.

41. Where the High Court of Chancery in England makes an order for winding-up a company under the principal act, it may, if it thinks fit, direct all subsequent proceedings to be had in a county court held under an act of the session of the ninth and tenth years of the reign of her present Majesty, chapter ninety-five, and the acts amending the same; and thereupon such county court shall, for the purpose of winding-up the company, be deemed to be "the court" within the meaning of the principal act, and shall have, for the purposes of such winding-up, all the jurisdiction and powers of the High Court of Chancery.

As to transfer of suit from one county court to another.

42. If during the progress of a winding-up it is made to appear to the High Court of Chancery that the same could be more conveniently prosecuted in any other county court, it shall be competent for the High Court of Chancery to transfer the same to such other county court, and thereupon the winding-up shall proceed in such other county court.

Parties aggrieved may appeal.

43. If any party in a winding-up under this act is dissatisfied with the determination or direction of a judge of a county court on any matter in such winding-up, such party may appeal from the same to the vice-chancellor named for that purpose by the lord chancellor by general order: provided that such party shall, within thirty days after such determination or direction, give notice of such appeal to the other party or his attorney, and also deposit with the registrar of the county court the sum of ten pounds as security for the costs of the appeal; and the said court of appeal may make such final or other decree or

30 & 31 Vict. c. 131, s. 43.

order as it thinks fit, and may also make such order with respect to the costs of the said appeal as such court may think proper, and such orders shall be final.

Powers to frame rules and orders under sect. 32 of 19 & 20 Vict. c. 108 (1).

44. The county court judges appointed or to be appointed by the lord chancellor from time to time to frame rules and orders for regulating the practice of the courts, and forms of proceedings therein, under the thirty-second section of an act passed in the nineteenth and twentieth years of the reign of her present Majesty, chapter one hundred and eight, shall frame the rules and orders for regulating the practice of the county courts under this act, and forms of proceedings therein, and from time to time may amend such rules, orders and forms; and such rules, orders and forms, or amended rules, orders and forms, certified under the hands of such judges or of any three or more of them, shall be submitted to the lord chancellor, who may allow or disallow or alter the same, and so from time to time; and the rules, orders and forms, or amended rules, orders and forms, so allowed or altered, shall from a day to be named by the lord chancellor be in force in every county court (1).

Scale of costs to be framed by the judges (2).

45. The county court judges mentioned in the last section shall be empowered to frame a scale of costs and charges to be paid to counsel and attornies with respect to all proceedings in a winding-up under this act, and from time to time to amend such scale; and such scale or amended scale, certified under the hands of such judges or any three or more of them, shall be submitted to the lord chancellor, who from time to time may allow or disallow or alter the same; and the scale or amended scale so allowed or altered shall, from a day to be named by the lord chancellor, be in force in every county court.

Remuneration of registrars and high bailiffs in winding-up of companies (3).

46. The registrars and high bailiffs of the county courts shall be remunerated for the duties to be performed by them under this act, by receiving, for their own use, such fees as may be from time to time authorized to be taken by any orders to be made by the commissioners of the treasury, with the consent of the lord chancellor; and the commissioners of the

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(1) See County Court Order of January 1, 1868, *post.*

(2) See scale of costs and charges allowed in the county courts, *post.*

(3) See Order regulating the fees in the county courts, *post.*

treasury are hereby authorized and empowered, with such consent as aforesaid, from time to time to make such orders: provided that it shall be lawful for the said commissioners, with the like consent as aforesaid, by an order to direct that after the date named in the order any registrar or high bailiff shall, in lieu of receiving such fees, be paid such fixed or fluctuating allowance as may in each case be thought just, and after such date the said fees shall be accounted for and paid over by such registrar or high bailiff in such manner as may be directed in the order.

Saving.

47. Nothing in this act contained shall exempt any company from the second or third provisions of the one hundred and ninety-sixth section of the principal act restraining the alteration of any provision in any act of parliament or charter.

Not to exempt companies from provisions of sect. 196 of 25 & 26 Vict. c. 89.

BANKING COMPANIES ACT, 1826.

7 Geo. 4, c. 46.

An Act for the better regulating Copartnerships of certain Bankers in England; and for amending so much of an Act of the Thirty-ninth and Fortieth Years of the Reign of His late Majesty King George the Third, intituled An Act for establishing an Agreement with the Governor and Company of the Bank of England, for advancing the Sum of Three Millions towards the Supply for the Service of the Year One thousand eight hundred, as relates to the same (1).

[26th May, 1826.]

Such copartnerships shall, before issuing any notes, &c.

IV. And be it further enacted, that before any such corporation, or copartnership exceeding the number of six persons, in England, shall begin to issue any bills or notes, or borrow, owe,

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To what extent now in force.

(1) This act was repealed as to companies formed after May 6th, 1844, by 7 & 8 Vict. c. 110; as to companies formed before that time, but registered under the act of 1856, by 20 & 21 Vict. c. 46.

It is still in force as to companies formed before May, 1844, and not registered under the Act of 1856 or 1862.

There are a number of companies formed under private acts of parliament empowered to sue and be sued by a public officer. The cases in the construction of such acts are given in the notes to the act under consideration.

Restrictions on the issue of notes, &c.

Section 1, after reciting the 39 & 40 Geo. 3, c. 28, under which corporations other than the Bank of England, and partnerships of more than six persons, were prohibited from issuing bills or notes payable on demand, or within six months, enacted, that co-partnerships of more than six persons might issue notes or bills payable at places sixty-five miles from London, provided they had no establishment in London, and every member should be liable, but (section 2) they might draw on partners within the distance for sums exceeding fifty pounds, and (section 3) discount bills not drawn on themselves.

3 & 4 Will. 4, c. 83, s. 2, provided that banks of more than six

or take up any money, on their bills or notes, an account or return shall be made out, according to the form contained in the schedule marked (A.) to this act annexed, wherein shall be set forth the true names, title, or firm of such intended or existing corporation or copartnership, and also the names and places of abode of all the members of such corporation, or of all the partners concerned or engaged in such copartnership, as the same respectively shall appear on the books of such corporation or copartnership, and the name or firm of every bank or banks established or to be established by such corporation or copartnership, and also the names and places of abode of two or more persons, being members of such corporation or copartnership, and being resident in England, who shall have been appointed public officers of such corporation or copartnership, together with the title of office or other description of every such public officer respectively, in the name of any one of whom such corporation shall sue and be sued as hereinafter provided, and also the name of every town and place where any of the bills or notes of such corporation or copartnership shall be issued by any such corporation, or by their agent or agents; and every such amount or return shall be delivered to the commissioners of stamps, at the stamp office in London, who shall cause the same to be filed and kept in the said stamp office, and an entry and registry thereof to be made in a book or books to be there kept for that purpose by some person or persons to be appointed by the said commissioners in that behalf, and which book or books any person or persons shall from time to time have liberty to search and inspect on payment of the sum of one shilling for every search.

deliver at the stamp office in London an account containing the name of the firm, &c. (1).

V. And be it further enacted, that such account or return shall be made out by the secretary or other person, being one

Account to be verified by secretary.

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persons might draw on agents in London for less than fifty pounds, notwithstanding 7 Geo. 4, c. 46; but this was repealed by 3 & 4 Will. 4, c. 98, s. 2. See also 7 & 8 Vict. c. 32, ss. 11, 12, 13, which prohibit banking companies from extending the amount of their issue of notes. Banks issuing notes are bound to make returns of their notes in circulation. See 3 & 4 Will. 4, c. 83; 4 & 5 Vict. c. 50; and 7 & 8 Vict. c. 32.

(1) Irregularity in the return does not deprive a company of the privileges conferred by the act. *Bonar* v. *Michell*, 5 Ex. 415.

7 Geo. 4, c. 46, s. 5.

of the public officers appointed as aforesaid, and shall be verified by the oath of such secretary or other public officer, taken before any justice of the peace, and which oath any justice of the peace is hereby authorized and empowered to administer; and that such account or return shall, between the twenty-eighth day of February and the twenty-fifth day of March in every year, after such corporation or copartnership shall be formed, be in like manner delivered by such secretary or other public officer as aforesaid, to the commissioners of stamps, to be filed and kept in the manner and for the purposes as hereinbefore mentioned.

Certified copies of returns to be evidence of the appointment of the public officers, &c. (1).

VI. And be it further enacted, that a copy of any such account or return so filed or kept and registered at the stamp office, as by this act is directed, and which copy shall be certified to be a true copy under the hand or hands of one or more of the commissioners of stamps for the time being, upon proof made that such certificate has been signed with the handwriting of the person or persons making the same, and whom it shall not be necessary to prove to be a commissioner or commissioners, shall in all proceedings, civil or criminal, and in all cases whatsoever, be received in evidence as proof of the appointment and authority of the public officers named in such account or return, and also of the fact that all persons named therein as members of such corporation or copartnership were members thereof at the date of such account or return.

Commissioners of stamps to give certified

VII. And be it further enacted, that the said commissioners of stamps for the time being shall and they are hereby required,

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Evidence.

(1) A certified copy of a return under this section is evidence of the facts stated in it, without proof that the affidavit annexed to the return was made by the public officer. *Steward* v. *Dunn*, 12 M. & W. 655; *Bosanquet* v. *Woodford*, 5 Q. B. 310; *Armitage* v. *Hamer*, 3 B. & Ad. 793.

The facts stated in such return may be proved *aliunde*. *Edwards* v. *Buchanan*, 3 B. & A. 788; *R.* v. *James*, 7 Car. & P. 553.

The annual general returns for March, 1848, were held admissible to prove that the defendant was a shareholder in January, 1848. *Bosanquet* v. *Shortbridge*, 4 Ex. 699.

Certified stamp office returns made by a person styling himself "cashier" of the company were sufficient evidence. *Harvey* v. *Scott*, 11 Q. B. 92.

A list filed not within the time limited by the act was not receivable in evidence that a defendant in an action of *sci. fa.* was not one of the proprietors. *Prescott* v. *Buffery*, 1 C. B. 41.

upon application made to them by any person or persons requiring a copy certified according to this act, of any such account or return as aforesaid, in order that the same may be produced in evidence or for any other purpose, to deliver to the person or persons so applying for the same such certified copy, he, she, or they paying for the same the sum of ten shillings and no more.

copies of affidavits, on payment of 10*s*.

VIII. Provided also, and be it further enacted, that the secretary or other officer of every such corporation or copartnership shall and he is hereby required, from time to time, as often as occasion shall render it necessary, make out upon oath, in manner hereinbefore directed, and cause to be delivered to the commissioners of stamps as aforesaid, a further account or return according to the form contained in the schedule marked (B.) to this act annexed, of the name or names of any person or persons who shall have been nominated or appointed a new or additional public officer or public officers of such corporation or copartnership, and also of the name or names of any person or persons who shall have ceased to be members of such corporation or copartnership, and also of the name or names of any person or persons who shall have become a member or members of such corporation or copartnership, either in addition to or in the place or stead of any former member or members thereof, and of the name or names of any new or additional town or towns, place or places, where such bills or notes are or are intended to be issued, and where the same are to be made payable; and such further accounts or returns shall from time to time be filed and kept, and entered and registered at the stamp office in London, in like manner as is hereinbefore required with respect to the original or annual account or return hereinbefore directed to be made.

Account of new officers or members in the course of any year to be made.

IX. And be it further enacted, that all actions and suits, and also all petitions to found any commission of bankruptcy against any person or persons, who may be at any time indebted to any such copartnership carrying on business under the provisions of this act, and all proceedings at law or in equity under

Copartnerships shall sue and be sued in the name of their public officers (1).

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(1) In *Siddon* v. *Connell*, 10 Sim. 58, a demurrer was allowed to a bill against a public officer of a banking company under 7 Geo. 4, c. 46, to set aside a purchase of shares on account of the fraudulent

What proceedings can be taken in name of officer.

7 Geo. 4, c. 46, s. 9. any commission of bankruptcy, and all other proceedings at law or in equity to be commenced or instituted for or on behalf

representations of the directors, as the litigation was between one member of a partnership as such and the others.

The public officer of a company governed by 7 Geo. 4, c. 46, does not represent the company in a suit by one shareholder for an account. *Abraham* v. *Hannay*, 13 Sim. 581.

The capital of a bank was increased, new members joined, and its name was changed: held, that the public officer might sue on a guarantee given to the company before the change. *Wilson* v. *Craven*, 8 M. & W. 584.

A company, which had stopped payment and merely kept their establishment open for the purpose of paying their debts, could still sue in the name of their public officer. *Davidson* v. *Cooper*, 11 M. & W. 778.

In companies under other acts.

It is no defence to an action against an officer of a public body empowered to sue and be sued by such officer, that no mode of enforcing the judgment has been provided. *Kendall* v. *King*, 17 C. B. 483; 25 L. J., C. P. 132.

A private act provided that a company might commence all actions and suits in the name of a public officer: the officer could not petition in bankruptcy. *Guthrie* v. *Fisk*, 3 B. & C. 137.

An act provided that actions for recovering debts or enforcing claims or demands might be commenced, and indictments for offences be preferred, in the name of the chairman. Held, that the chairman might sue for a libel on the company. *Williams* v. *Beaumont*, 10 Bing. 260.

Effect of change of office.

In an action, brought by a public officer of a company under this act, judgment having been entered up, an execution issued in his name after he had ceased to be such public officer, the court permitted a suggestion of his removal, and the name of another officer to be entered *nunc pro tunc* on the roll, and the judgment and the *ca. sa.* to be amended by the insertion of the officer's name without costs, though the defendant had been arrested and had applied to set aside the proceedings for irregularity. *Webb* v. *Taylor*, 8 Jur. 39; 1 Dowl. & L. 676; *Probin* v. *Locock*, 1 Dowl. 197.

Effect of death of officer.

A plaintiff sued as a public officer and signed judgment; a writ of *ca. sa.* was executed after his death. *Todd* v. *Wright*, 11 Jur. 471; 16 L. J., Q. B. 311.

T., a public officer, suing, died after issue joined. The nisi prius record was made up from the plea roll as though T. were alive. The venire was awarded as between T. and the defendants. No entry was made on the plea roll of T.'s death or of the appointment of B. as a new public officer, but a memorandum was afterwards made and entered upon the nisi prius record of these facts, but not by way of suggestion nor followed by any confession by the defendants on a *nient dedire*. The cause was entered for trial in the name of B. as plaintiff, and was tried by the jury returned to the venire between T. and the defendants. Notice was given to the defendants that such entry would be made and the cause tried. The defendants appeared under protest, and the verdict was for the plaintiff:—Held,

of any such copartnership against any person or persons, bodies politic or corporate, or others, whether members of such

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the entry was irregular, and did not authorize the trial of the cause in the name of B.

Query, if the facts had been properly suggested on the plea roll, would they have been traversable? *Barwall* v. *Sutherland*, 19 L. J., C. P. 290; 1 L. M. & P. 159.

In an action against a public officer the court set aside a plea of the defendant's bankruptcy on the plaintiff's undertaking not to sue out execution personally against the defendant, his lands, or goods. *Steward* v. *Dunn*, 11 M. & W. 63. Bankruptcy of officer.

1 & 2 Vict. c. 96 (*a*), enacts,

I. *Banking Copartnerships may sue and be sued.*]—That any person now being or having been or who may hereafter be or have been a member of any copartnership now carrying on or which may hereafter carry on the business of banking under the provisions of the said recited acts may, at any time during the continuance of this act, in respect of any demand which such person may have, either solely or jointly with any other person, against the said copartnership, or the funds or property thereof, commence and prosecute, either solely or jointly with any other person (as the case may require), any action, suit, or other proceeding at law or in equity against any public officer appointed or to be appointed under the provisions of the said acts to sue and be sued on the behalf of the said copartnership; and that any such public officer may in his own name commence and prosecute any action, suit, or other proceeding at law or in equity against any person being or having been a member of the said copartnership, either alone or jointly with any other person, against whom any such copartnership has or may have any demand whatsoever; and that every person being or having been a member of any such copartnership shall, either solely or jointly with any other person (as the case may require), be capable of proceeding against any such copartnership by their public officer, and be liable to be proceeded against, by or for the benefit of the said copartnership, by such public officer as aforesaid, by such proceedings and with the same legal consequences as if such person had not been a member of the said copartnership; and that no action or suit shall in anywise be affected or defeated by reason of the plaintiffs or defendants or any of them respectively, or any other person in whom any interest may be averred, or who may be in anywise interested or concerned in such action, being or having been a member of the said copartnership; and that all such actions, suits, and proceedings shall be conducted and have effect as if the same had been between strangers. Proceedings between a company and its members,

II. *Proceedings in an action may be pleaded in bar of any other action.*]—And be it enacted, That in case the merits of any demand by or against any such copartnership shall have been determined in

(*a*) A public officer proved in bankruptcy against the estate of a shareholder under this section. *Re Caldicott, e.p. Davidson*, 1 M. D. & D. 648; 2 M. D. & D. 368.

This act was made perpetual by 4 & 5 Vict. c. 85.

7 Geo. 4, c. 46, s. 9.

copartnership or otherwise, for recovering any debts or enforcing any claims or demands due to such copartnership, or for any

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any action or suit by or against any such public officer, the proceedings in such action or suit may be pleaded in bar of any other action or suit by or against the public officer of the same copartnership for the same demand.

III. *Extending provisions of recited acts to present act.*]—And be it enacted, That all the provisions of the said recited acts relative to actions, suits, and proceedings commenced or prosecuted under the authority thereof, shall be applicable to actions, suits, and proceedings commenced or prosecuted under the authority of this act.

IV. *Member's share, &c., not to be set off against demand of copartnership.*]—And be it enacted, That no claim or demand which any member of any such copartnership may have in respect of his share of the capital or joint stock thereof, or of any dividends, interest, profits, or bonus payable or apportionable in respect of such share, shall be capable of being set off, either at law or in equity, against any demand which such copartnership may have against such member on account of any other matter or thing whatsoever; but all proceedings in respect of such other matter or thing may be carried on as if no claim or demand existed in respect of such capital or joint stock, or of any dividends, interest, profits, or bonus payable or apportionable in respect thereof.

3 & 4 Vict. c. 111 (*a*), s. 2, enacts,

Punishing members of banking companies embezzling notes, &c.]—"And whereas it is expedient to extend the provisions of the said act hereby continued in manner hereinafter stated;" be it enacted, That if any person or persons, being a member or members of any banking copartnership within the meaning of the said act, or of any other banking copartnership consisting of more than six persons, formed under or in pursuance of an act passed in the third and fourth years of the reign of King William the Fourth, intituled, "An Act for giving to the Corporation of the Governor and Company of the Bank of England certain privileges, for a limited Period, under certain Conditions," shall steal or embezzle any money, goods, effects, bills, notes, securities, or other property of or belonging to any such copartnership, or shall commit any fraud, forgery, crime, or offence against or with intent to injure or defraud any such copartnership, such member or members shall be liable to indictment, information, prosecution, or other proceeding in the name of any of the officers for the time being of any such copartnership, in whose name any action or suit might be lawfully brought against any member or members of any such copartnership for every such fraud, forgery, crime or offence, and may thereupon be lawfully convicted, as if such person or persons had not been or was or were not a member or members of such copartnership; any law, usage, or custom to the contrary notwithstanding.

In companies under other acts.

It was questioned whether a member of a company governed by

(*a*) This act was made perpetual by 4 & 5 Vict. c. 85.

other matter relating to the concerns of such copartnership, shall and lawfully may, from and after the passing of this act,

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the Irish Banking Act, 6 Geo. 4, c. 42, could be sued by a public officer. *Hughes* v. *Thorpe*, 5 M. & W. 656; 9 L. J., Ex. 109.

A private act authorized suits to be instituted in the name of the chairman, and in all proceedings in which it would have been necessary to state the names of the partners it was made sufficient to state the name of the chairman only. That act did not authorize proceedings to be commenced in the name of the chairman against one of the partners. *MacMahon* v. *Upton*, 2 Sim. 473.

In *Skinner* v. *Lambert*, 4 M. & W. 477, an action was brought by the secretary of a company, empowered by special act to sue in the name of the secretary, for instalments of capital a member had covenanted with trustees to pay.

In *Wills* v. *Sutherland*, 18 L. J., Ex. 450; 5 Ex. 715, and *Lawrence* v. *Wynn*, 5 M. & W. 355; 8 L. J., Ex. 235, actions for calls were brought by public officers of companies empowered to sue and be sued; and in *Reddich* v. *Pinnock*, 10 Ex. 213, an action for debt was brought against a member of such a company.

Where the treasurer of trustees of an undertaking might sue for calls, an action would lie on the case or for debt. *Miles* v. *Bough*, 3 Q. B. 845.

It was questioned whether a member of a company governed by a special act of parliament could sue out a writ of *sci. fa.* against another member. *Mather* v. *The National Assurance Association*, 14 C. B., N. S. 676.

Pleading.

It is sufficient to allege that plaintiff is a public officer. It is not necessary to allege that he is a member, that he has been duly registered under the 4th section, or that he is resident in England. *Spiller* v. *Johnson*, 6 M. & W. 570.

The declaration need not state that he has been named as manager, or that the copartnership has been established under the provisions of that act. *Christie* v. *Peart*, 7 M. & W. 491; *Howe* v. *Love*, 10 Ir. Rep. 505.

A declaration describing the plaintiff "as one of the present public officers of certain persons united in copartnership *for the purpose of* carrying on the business of banking in England according to the statute 7 Geo. 4, c. 46," had to be amended by substituting the word "and" for "for the purpose of." *Fletcher* v. *Crosbie*, 9 M. & W. 252.

A declaration described the plaintiff as one of the public officers of certain persons united in copartnership for the purpose of carrying on the trade or business of bankers in England according to the 7 Geo. 4, c. 46. Held, on motion in arrest of judgment, that looking at the whole record, it sufficiently appeared that the copartnership was carrying on business as bankers under the statute. *Davidson* v. *Bower*, 4 M. & Gr. 627. See also *Ness* v. *Bertram*, 4 Ex. 195.

"P. M., the secretary for the time being of a certain company called, &c.," was sufficient description in a declaration. *M'Intyre* v. *Miller*, 13 M. & W. 725; *Esdaile* v. *Maclean*, 15 M. & W. 277.

An action was brought by the manager of a company in his own

7 Geo. 4, c. 46, s. 9.

be commenced or instituted and prosecuted in the name of any one (1) of the public officers nominated as aforesaid for the time being of such copartnership, as the nominal plaintiff or petitioner for and on behalf of such copartnership; and that all actions or suits, and proceedings at law or in equity, to be commenced or instituted by any person or persons, bodies politic or corporate, or others, whether members of such copartnership or otherwise, against such copartnership, shall and lawfully may be commenced, instituted, and prosecuted against any one or more of the public officers nominated as aforesaid for the time being of such copartnership, as the nominal defendant for and on behalf of such copartnership; and that all indictments, informations, and prosecutions by or on behalf of such copartnership, for any stealing or embezzlement of any money, goods, effects, bills, notes, securities, or other property of or belonging to such copartnership, or for any fraud, forgery, crime, or offence committed against or with intent to injure or defraud such copartnership, shall and lawfully may be had, preferred, and carried on in the name of any one of the public officers nominated as aforesaid for the time being of such copartnership; and that in all indictments and informations to be had or preferred by or on behalf of such copartnership against any person or persons whomsoever, notwithstanding such person or persons may happen to be a member or members of such copartnership, it shall be lawful and sufficient to state the money, goods, effects, bills, notes, securities, or other property of such copartnership, to be the money, goods, effects, bills, notes, securities, or other property of any one of the public officers nominated as aforesaid for the time being of

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name upon a promissory note. There was a plea of *non fecit*, and a plea that the plaintiff was not manager. A verdict was given for the plaintiff upon both issues; it was not open to the defendant in that state of the record to contend that the plaintiff should have sued as public officer. *Robertson* v. *Sheward*, 1 M. & Gr. 511.

The court allowed a denial of the fact that a company was carrying on business of bankers in addition to pleas on the merits. *Roe* v. *Fuller*, 7 Ex. 220.

Public officer was not allowed to plead both that he was not the public officer at the time of the commencement of the suit, and plea going to the merits of the case. *Needham* v. *Law*, 11 M. & W. 400.

(1) An action having been brought in the names of two officers, the court allowed the name of one to be struck out on payment of costs. *Holmes* v. *Binney*, 6 Scott, 346.

such copartnership (1); and that any forgery, fraud, crime, or other offence committed against or with intent to injure or defraud any such copartnership, shall and lawfully may in such indictment or indictments, notwithstanding as aforesaid, be laid or stated to have been committed against or with intent to injure or defraud any one of the public officers nominated as aforesaid for the time being of such copartnership (1); and any offender or offenders may thereupon be lawfully convicted for any such forgery, fraud, crime, or offence; and that in all other allegations, indictments, informations, or other proceedings of any kind whatsoever, in which it otherwise might or would have been necessary to state the names of the persons composing such copartnership, it shall and may be lawful and sufficient to state the name of any one of the public officers nominated as aforesaid for the time being of such copartnership; and the death, resignation, removal, or any act of such public officer, shall not abate or prejudice any such action, suit, indictment, information, prosecution, or other proceeding commenced against or by or on behalf of such copartnership, but the same may be continued, prosecuted, and carried on in the name of any other of the public officers of such copartnership for the time being.

Not more than one action for the recovery of one demand.

X. And be it further enacted, that no person or persons, or body or bodies politic or corporate, having or claiming to have any demand upon or against any such corporation or copartnership, shall bring more than one action or suit, in case the merits shall have been tried in such action or suit, in respect of such demand; and the proceedings in any action or suit, by or against any one of the public officers nominated as aforesaid for the time being of any such copartnership, may be pleaded in bar of any other action or actions, suit or suits, for the same

(1) In an indictment for larceny of property belonging to a bank, the property was laid to be in the manager of the bank. No registration or appointment of a public officer was proved. The judge amended the indictment by stating the property to be in W. (one of the partners) and others. Held, that under 7 Geo. 4, c. 64, s. 14, the amendment was right. *R.* v. *Pritchard*, 7 Jur., N. S. 557.

An indictment for forgery may be laid with intent to defraud A. B. (a member of the copartnership) and others. *R.* v. *Carter*, 1 Car. & K. 741; *R.* v. *Beard*, 8 Car. & P. 143; *R.* v. *James*, 7 Car. & P. 553.

7 Geo. 4, c. 46. s. 10.

demand, by or against any other of the public officers of such copartnership.

Decrees of a court of equity against the public officer to take effect against the copartnership.

XI. And be it further enacted, that all and every decree or decrees, order or orders, made or pronounced in any suit or proceeding in any court of equity against any public officer of any such copartnership carrying on business under the provisions of this act, shall have the like effect and operation upon and against the property and funds of such copartnership, and upon and against the persons and property of every or any member or members thereof, as if every or any such members of such copartnership were parties members before the court to and in any such suit or proceeding; and that it shall and may be lawful for any court in which such order or decree shall have been made, to cause such order and decree to be enforced against every or any member of such copartnership, in like manner as if every member of such copartnership were parties before such court to and in such suit or proceeding, and although all such members are not before the court.

Judgments against such public officer shall operate against the copartnership (1).

XII. And be it further enacted, that all and every judgment and judgments, decree or decrees, which shall at any time after the passing of this act be had or recovered or entered up as aforesaid, in any action, suit, or proceedings in law or equity against any public officer of any such copartnership, shall have the like effect and operation upon and against the property of such copartnership, and upon and against the property of every such member thereof as aforesaid, as if such judgment or judgments had been recovered or obtained against such copartnership; and that the bankruptcy, insolvency, or stopping payment of any such public officer for the time being of such copartnership, in his individual character or capacity, shall not be nor be construed to be the bankruptcy, insolvency, or stopping payment of such copartnership; and that such copartnership and every member thereof, and the capital stock and effects of such copartnership, and the effects of every member of such copartnership, shall in all cases, notwithstanding the bank-

(1) *Semble*, if there is no mode provided of enforcing judgments against an association or public body empowered to sue and be sued by an officer, it may be enforced by suit in equity or mandamus. *Kendall* v. *King*, 19 C. B. 483; 25 L. J., C. P. 132.

ruptcy, insolvency, or stopping payment of any such public officer, be attached and attachable, and be in all respects liable to the lawful claims and demands of the creditor and creditors of such copartnership, or of any member or members thereof, as if no such bankruptcy, insolvency, or stopping payment of such public officer of such copartnership had happened or taken place.

Execution upon judgment may be issued against any member of the copartnership (1).

XIII. And be it further enacted, that execution upon any judgment in any action obtained against any public officer for the time being of any such corporation or copartnership carrying on the business of banking under the provisions of this act,

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(1) A creditor cannot sue individual shareholders, at least where there is a public officer within the jurisdiction. *Steward* v. *Greaves*, 10 M. & W. 711.

Remedy is not cumulative.

The remedies given by this act are not cumulative but substitutional for the prior liabilities of partners; *Barker* v. *Buttress*, 7 Beav. 134; *Davison* v. *Farmer*, 6 Ex. 242; but it does not follow that because a company has power to sue and be sued in the name of a public officer, that such mode of suing is compulsory.

In *Beech* v. *Eyre*, 5 M. & Gr. 415, assumpsit was brought against a shareholder of such a company, following *Blewett* v. *Gordon*, 1 Dow., N. S. 815; *Pentland* v. *Gibson*, 1 Alc. & Nap. 310.

Mode of proceeding by *sci. fa.*

The mode of charging members is by *scire facias*, and not by suggestion. *Whittenbury* v. *Law*, 6 Bing., N. C. 345; *Clowes* v. *Brettell*, 10 M. & W. 506; *Cross* v. *Law*, 6 M. & W. 217; *Ransford* v. *Bosanquet*, 2 Q. B. 972.

The rule for *scire facias* under this statute is absolute in the first instance, and need not be moved for in open court. *Stainton* v. *Tyson*, 1 Bail C. C. 111; *Johnson* v. *Brettell*, 7 Jur. 219.

It has been held that no *scire facias* was necessary against the officer himself, he being a party to the record. (Parke, B., *dubitante.*) *Harwood* v. *Law*, 7 M. & W. 203.

Defences to action of *sci. fa.*

Where a rule to issue a *scire facias* has been abandoned on terms, the plaintiff is not precluded from applying for a *scire facias* against the same member. *Dodgson* v. *Scott*, 2 Ex. 457.

The plaintiff may have separate concurrent writs going on at the same time. *Esdaile* v. *Lord*, 12 M. & W. 612; *Fowler* v. *Rickerby*, 2 M. & Gr. 760; *Nunn* v. *Lomer*, 3 Ex. 471; *Burnester* v. *Crompton*, 3 Ex. 397.

The defendant cannot plead any matter that would have been a defence to the action against the public officer. *Bradley* v. *Eyre*, 1 Dowl. & L. 620; *Philipson* v. *Lord Egremont*, 6 Q. B. 587; *Dodgson* v. *Scott*, 2 Ex. 457.

The form of the declaration in *scire facias* may be such that it could have been demurred to in the action against the public officer. *Ness* v. *Bertram*, 4 Ex. 195.

A declaration sufficiently described a defendant as "now a member of the said copartnership." *Nunn* v. *Claxton*, 3 Ex. 712.

If the nominal defendant fraudulently or collusively suffers judg-

7 Geo. 4, c. 46, s. 13.

whether as plaintiff or defendant, may be issued against any

ment against him, application may be made to the court to set it aside; *Fowler* v. *Rickerby*, 2 M. & Gr. 760; 9 Dowl. 682; *Harvey* v. *Scott*, 11 Q. B. 92; or it may be pleaded to the *scire facias*. *Philipson* v. *Lord Egremont*, 6 Q. B. 587; *Dodgson* v. *Scott*, 2 Ex. 457.

Pleading.

Where leave of the court is necessary before issuing the writ, want of leave cannot be pleaded. *Bradley* v. *Warburg*, 11 M. & W. 452.

Application in such case to set aside the writ must be made promptly and before plea. *Bradley* v. *Urquhart*, 11 M. & W. 583; *Ricketts* v. *Bowhay*, 3 C. B. 889.

If there be a variance in the number of defendants between the writ and the declaration, that objection cannot be taken advantage of by demurrer. *Fowler* v. *Rickarby*, 2 M. & Gr. 766.

The non-joinder of other parties is not pleadable in abatement. *Clowes* v. *Brettell*, 10 M. & W. 507; 11 M. & W. 461.

The court quashed a writ of *scire facias* which alleged that the defendant was a member "at the time of the commencement of the action in which the judgment was obtained, and at the time of the recovery and giving of the judgment, and from thence continually has been and still is a member." *Bank of Scotland* v. *Fenwick*, 1 Ex. 792; 17 L. J., Ex. 92; *Esdaile* v. *Trustwell*, 1 Ex. 371.

A plea that the defendants were the executors of S., and as such entitled to the share of S., and members of the copartnership, by reason of their share and interest as executors, and not otherwise, and that they had fully administered the goods of S., was held bad on special demurrer as amounting to an argumentative denial that the defendants were members. *Ness* v. *Bertram*, 4 Ex. 195.

Liabilities of husband of shareholder.

A clause in the deed of settlement of a company provided that the husband of a female proprietor should not be a shareholder, but might sell her shares or become a member on complying with certain provisions.

Shares were bought by a married woman out of her separate estate, and registered in her name. The husband received dividends as her agent, and attended meetings, but did not comply with the provisions: he could not be sued on *scire facias* on a judgment obtained against the public officer. *Ness* v. *Angas*, 18 L. J., Ex. 470; 3 Ex. 805.

Liability of executors.

In *Ricketts* v. *Bowhay*, 3 C. B. 889, it was doubted whether, under this act, recourse could be had to the estates of deceased shareholders.

The deed of settlement of a company under this act provided that the executor of a deceased shareholder should not be a member, but should be at liberty to sell the shares or become a member on complying with certain provisions, and that if he did not elect to become a member he was not to be entitled to any dividend accruing after the testator's death. An executor who had received a dividend, but had not complied with the provisions, was not a member for the purpose of execution against him by *scire facias*, or a judgment against the public officer of the company. *Ness* v. *Armstrong*, 4 Ex. 21.

Compare *Ness* v. *Bertram*, 4 Ex. 195.

Proceedings against share-

An act of the colonial legislature of New South Wales enabled

member or members for the time being (1) of such corporation or copartnership; and that in case any such execution against any member or members for the time being of any such corporation or copartnership shall be ineffectual for obtaining payment and satisfaction of the amount of such judgment, it shall be lawful for the party or parties so having obtained judgment against such public officer for the time being, to issue execution against any person or persons who was or were a member or members of such corporation or copartnership at the time when the contract or contracts or engagement or engagements in which such judgment may have been obtained was or were entered into, or became a member at any time before such contracts or engagements were executed, or was a member at the time of the judgment obtained (2): provided

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the chairman of a company to sue and be sued on behalf of the company, and provided that execution upon a judgment obtained in such action against the chairman might be issued against the goods, &c., of any member of the company in like manner as if such judgment had been obtained against him personally. It was held, that the specific mode of enforcing the judgment by execution against a member could not be obtained against a person out of the colony, but that the judgment against the chairman might be made the foundation of an action against a member beyond the territory of the colony, in the same manner as if he had been personally served, and the recovery had been against him as a party to the record. *Bank of Australia* v. *Nias*, 20 L. J., Q. B. 284; 16 Q. B. 717; *Bank of Australia* v. *Harding*, 19 L. J., C. P. 345; 9 C. B. 661. holders of foreign companies.

An Indian company was empowered to sue and be sued in the name of their secretary under an Indian act. A shareholder was sued in this country upon a judgment obtained in India against the secretary. *Kelsall* v. *Marshall*, 26 L. J., C. P. 19; 1 C. B., N. S. 241.

(1) For the time being means at the time of the issuing the *scire facias*. *Bradley* v. *Eyre*, 11 M. & W. 332; 1 Dow. & L. 276; *Dodgson* v. *Scott*, 2 Ex. 465.

(2) The members for the time being are first to be proceeded against. *Dodgson* v. *Scott*, 2 Ex. 457; *Barker* v. *Buttress*, 7 Beav. 143. And if the plaintiff can show that every reasonable and proper effort has been made to satisfy the judgment from that class, he will be allowed to proceed against the other classes. *Eardley* v. *Law*, 12 Ad. & E. 802; *Bosanquet* v. *Ransford*, 11 Ad. & E. 520. But it is not essential that executions should have been issued against every existing member for the time being if it appear probable that such executions would be ineffectual. *Harvey* v. *Scott*, 11 Q. B. 92; *Field* v. *M'Kenzie*, 4 C. B. 705; *Dodgson* v. *Scott*, 2 Ex. 457. Liability of past members.

A *scire facias* against a member at the time of the contract ought to state the prior execution against the member at the time of the execution. *Bank of England* v. *Johnson*, 3 Ex. 598; 18 L. J., Ex. 238.

7 Geo. 4, c. 46, s. 13.

always, that no such execution as last mentioned shall be issued without leave first granted, on motion in open court, by the court in which such judgment shall have been obtained, and when motion shall be made on notice (1) to the person or persons sought to be charged, nor after the expiration of three years next after any such person or persons shall have ceased to be a member or members of such corporation or copartnership (2).

Officer, &c. in such cases indemnified (3).

XIV. Provided always, and be it further enacted, that every such public officer in whose name any such suit or action shall have been commenced, prosecuted, or defended, and every person or persons against whom execution upon any judgment obtained or entered up as aforesaid in any such action shall be issued as aforesaid, shall always be reimbursed and fully indemnified for all loss, damages, costs, and charges, without deduction, which any such officer or person may have incurred by reason of such execution, out of the funds of such copartnership, or in failure thereof, by contribution from the other members of such copartnership, as in the ordinary cases of copartnership.

Penalty on copartnership neglecting to send returns, 500*l*.

XVIII. And be it further enacted, that if any such corporation or copartnership exceeding the number of six persons in

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Notice.

(1) As to the form of notice, see *Clowes* v. *Brettell*, 11 M. & W. 461.

Personal service seems to be necessary. *Esdaile* v. *Smith*, 18 L. J., Ex. 120. But compare *Morse* v. *Royal British Bank*, 1 C. B., N. S. 67; 26 L. J., C. P. 62, a case on the Companies Act, 1844.

Under that act it was held no objection to the notice that it contained the names of two members, when it was only intended to proceed against one. *Dosset* v. *Harding*, 1 C. B., N. S. 524.

Under the same act it was held that a notice being given to a member as John H., when the name on the memorial was John S. H., was good. *Thomas* v. *Harding*, 1 C. B., N. S. 555.

(2) The liability to contribute *inter se* is not affected by this section. *North of England Banking Co., e.p. Gouthwaite*, 3 M. & G. 187; 20 L. J., Ch. 188.

Personal liability of officer.

(3) A dock company were authorized to sue and be sued by their treasurer; he was not to be liable personally. Two actions between the treasurer and G., in one of which the treasurer was plaintiff, in the other defendant, were referred to arbitration, and were awarded against the treasurer with costs. The costs and damages being unpaid, and an attachment being moved for against the treasurer, the court held that he had not rendered himself personally liable by submitting to an order of reference and refused an attachment, but ordered a mandamus to the treasurer and directors to pay the sums awarded. *Corpe* v. *Glyn*, 3 B. & Ad. 801; 1 L. J. (N. S.), K. B. 66.

England, shall begin to issue any bills or notes, or to borrow, owe, or take up any money on their bills or notes, without having caused such account or return as aforesaid to be made out and delivered in the manner and form directed by this act, or shall neglect or omit to cause such account or return to be renewed yearly and every year, between the days or times hereinbefore appointed for that purpose, such corporation or copartnership so offending shall, for each and every week they shall so neglect to make such account and return, forfeit the sum of five hundred pounds; and if any secretary or other officer of such corporation or copartnership shall make out or sign any false account or return, or any account or return which shall not truly set forth all the several particulars by this act required to be contained or inserted in such account or return, the corporation or copartnership to which such secretary or other officer so offending shall belong shall for every such offence forfeit the sum of five hundred pounds, and the said secretary or other officer so offending shall also for every such offence forfeit the sum of one hundred pounds; and if any such secretary or other officer making out or signing any such account or return as aforesaid, shall knowingly and wilfully make a false oath of or concerning any of the matters to be therein specified and set forth, every such secretary or other officer so offending, and being thereof lawfully convicted, shall be subject and liable to such pains and penalties as by any law now in force persons convicted of wilful and corrupt perjury are subject and liable to.

Penalties for making false returns.

False oath perjury.

The other sections of the act relate to the law of banking.

SCHEDULES referred to by this Act.

SCHEDULE (A.)

RETURN or Account to be entered at the Stamp Office in London, in pursuance of an Act passed in the Seventh Year of the Reign of King George the Fourth, intituled [*here insert the title of this Act,*] viz.

Firm or name of the banking corporation or copartnership, viz. [*set forth the firm or name.*]

Names and places of abode of all the partners concerned or engaged in such corporation or copartnership, viz. [*set forth all the names and places of abode.*]

Names and places of the bank or banks established by such corporation or copartnership, viz. [*set forth all the names and places.*]

Names and descriptions of the public officers of the said banking corporation or copartnership, viz. [*set forth all the names and descriptions.*]

Names of the several towns and places where the bills or notes of the said banking corporation or copartnership are to be issued by the said corporation or copartnership, or their agent or agents, viz. [*set forth the names of all the towns and places.*]

A. B. of secretary [*or other officer, describing the office*] of the above corporation or copartnership, maketh oath and saith, that the above doth contain the name, style, and firm of the above corporation or copartnership, and the names and places of the abode of the several members thereof, and of the banks established by the said corporation or copartnership, and the names, titles, and descriptions of the public officers of the said corporation or copartnership, and the names of the towns and places where the notes of the said corporation or copartnership are to be issued, as the same respectively appear in the books of the said corporation or copartnership, and to the best of the information, knowledge, and belief of this deponent.

Sworn before me, the day of at in the county of .

C. D., justice of the peace in and for the said county.

SCHEDULE (B.)

RETURN or Account to be entered at the Stamp Office in London, on behalf of [*name the corporation or copartnership*] in pursuance of an Act passed in the Seventh Year of the Reign of King George the Fourth, intituled [*insert the title of this act,*] viz.

Names of any and every new or additional public officer of the said corporation or copartnership; viz.

A. B. in the room of C. D. deceased or removed [*as the case may be*] [*set forth every name.*]

Names of any and every person who may have ceased to be a member of such corporation or copartnership; viz. [*set forth every name.*]

Names of any and every person who may have become a new member of such corporation or copartnership [*set forth every name.*]

Names of any additional towns or places where bills or notes are to be issued, and where the same are to be made payable.

A. B. of secretary [*or other officer*] of the above-named corporation or copartnership, maketh oath and saith, that the above doth contain the name and place of abode of any and every person who hath become or been appointed a public officer of the above corporation or copartnership, and also the name and place of abode of any and every person who hath ceased to be a member of the said corporation or copartnership, and of any and every person who hath become a member of the said copartnership since the registry of the said corporation or copartnership on the day of last, as the same respectively appear on the books of the said corporation or copartnership, and to the best of the information, knowledge, and belief of this deponent.

Sworn before me, the day of at in the county of .

C. D., justice of the peace in and for the said county.

COMPANIES FORMED BY LETTERS-PATENT UNDER 1 VICT. c. 73.

7 WILL. 4 & 1 VICT. c. 73.

An Act for better enabling Her Majesty to confer certain Powers and Immunities on trading and other Companies (1). [17th July, 1837.]

WHEREAS divers associations are and may be formed for trading or other purposes, some of which associations it would be inexpedient to incorporate by royal charters, although it would be expedient to confer on them some of the privileges of and incident to corporations created by royal charters, and also to invest such associations or some of them with certain other powers and privileges: and whereas it would also be expedient to extend the powers of her Majesty in reference to the creation of corporations, and to the con-

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(1) Companies can still be formed under this act. See Companies Act, 1862, s. 4, *ante*, p. 178. But it seems to have fallen into disuse, as returns from *two* companies only have been received at the Inrolment Office for a long period.

How charters are granted.

Grants of the queen are made by charters or letters-patent, under the great seal of the United Kingdom. *Rex* v. *Bullock*, 1 Taun. 71; *Rex* v. *Yandell*, 4 T. R. 521. They are matters of public record. Bro. Abr. Prerog. 70, 95; Com. Dig. Pat. (A.); 3 Lev. 223; 2 Bl. Com. c. 21, s. 2.

Void charters.

If the grant of the queen be founded upon a false suggestion it will be void. Com. Dig. Grant (G. 8, 9); *Earl of Devon's Case*, 11 Co. 90 a; Vin. Abr. Prerog. (N. b. 1). And if the queen be misinformed or be deceived in her grant, or grant more than she lawfully may, the whole grant will be void. Case of *Alton Woods*, 1 Co. R. 49 e; Com. Dig. Gr. (G. 8); Vin. Abr. Prerog. (G. b. 2).

The grant of the queen will be void for a misrecital; Moore, 318; Hob. 224: or for want of form; Hob. 323; Vin. Abr. Prerog. (G. b. 2): for uncertainty; 2 Rol. Abr. 196, l. 30; Com. Dig. Grant (G. 6); Vin. Abr. Prerog. (G. b, c); *Boulton and Watt* v. *Bull*, 2 H. Bl. 482: or if too general; 2 Rol. Abr. 193, l. 41.

Practice in obtaining charters.

Charters are obtained by petitioning the queen in council. The petition and draft of the proposed charter are left at the council office, and are then referred to the board of trade. The colonial office, foreign office and India office are also referred to, if the proposed company falls within their departments. If it is determined that a charter shall be granted, it issues under the great seal. See Wordsworth on Joint Stock Companies, 401, 10th ed.; see as to advertisements *post*, s. 32, p. 396.

ferring of privileges upon corporations, and upon other bodies or companies enabled to sue and be sued: and whereas by act 6 Geo. 4, c. 91, it was amongst other things enacted, that in any charter thereafter to be granted by his Majesty, his heirs or successors, for incorporation of any company or body of persons, it should and might be lawful in and by such charter to declare and provide that the members of such corporation should be individually liable in their persons and property for the debts, contracts and engagements of such corporation, to such extent, and subject to such regulations and restrictions, as his Majesty, his heirs or successors, might deem fit and proper, and as should be declared and limited in and by such charter, and the members of such corporation should thereby be rendered so liable accordingly: and whereas by an act 4 & 5 Will. 4, c. 94, his Majesty, his heirs and successors, were empowered to grant to unincorporated companies and associations certain privileges in such last-mentioned act set forth: and whereas the aforesaid provisions of the said recited acts have not been found effectual for the purposes thereby intended, and it is therefore expedient to repeal the same, and to make such provisions in reference to the several matters aforesaid as are hereinafter contained: It is therefore enacted by, &c., that so much of the said act 6 Geo. 4, c. 91, as is hereinbefore set forth, and also the said recited act 4 & 5 Will. 4, c. 94, shall be and they are hereby respectively repealed.

6 Geo. 4, c. 91.

4 & 5 Will. 4, c. 94.

So much of 6 Geo. 4, c. 91, as is hereinbefore set forth, and the 4 & 5 Will. 4, c. 94, repealed.

2. It shall and may be lawful for her Majesty, her heirs and successors, by letters-patent to be from time to time for that purpose issued under the great seal of the United Kingdom of Great Britain and Ireland, or in Scotland under the seal appointed by the articles of union to be used instead of the great seal thereof, to grant to any company or body of persons associated together for any trading or other purposes whatsoever, and to the heirs, executors, administrators and assigns of any such persons, although not incorporated by such letters-patent, any privilege or privileges which, according to the rules of the common law, it would be competent to her Majesty, her heirs and successors, to grant to any such company or body of persons in and by any charter of incorporation.

Privileges may be granted by letters-patent to persons associated for trading or other purposes.

3. In any such letters-patent so to be granted as aforesaid by her Majesty, her heirs or successors, to any such company or body of persons so associated together as aforesaid, but not incorporated, it shall and may be lawful, in and by such letters-patent, either expressly or by a general or special reference to this act, to provide and declare that all suits and proceedings, whether at law, in equity, or in bankruptcy or sequestration, or otherwise howsoever, as well in Great Britain and Ireland as in the colonies and dependencies thereof, by or on behalf of such company or body, or any person or persons as trustee or trustees for such company or body, against any person or persons, whether bodies politic or others, and whether members or not of such company or body, shall be commenced and prosecuted in the name of one of the two officers for the time being to be appointed to sue and be sued on behalf of such company or body, and registered in pursuance of the directions of such appointment and registration respectively hereinafter contained; and that all suits and proceedings, whether at law or in equity, by or on behalf of any person or persons, whether bodies politic or others, and whether or not members of such company or body, against such

The letters patent so granted may provide that suits shall be carried on in the name of one of the officers of any company appointed for that purpose.

7 Will. 4 & 1 Vict. c. 73, s. 3.

company or body, shall be commenced and prosecuted against one of such officers, or if there shall be no such officer for the time being, then against any member of such company or body: provided nevertheless, that nothing in this act or in such letters-patent contained or to be contained shall prevent the plaintiff from joining any member of such company or body with such officer as a defendant in equity, for the purpose of discovery, or in case of fraud.

Proviso.

Individual liability of members of a company may be restricted by letters-patent (1).

4. It shall and may be lawful, in and by such letters-patent so to be granted to any such body or company as aforesaid, to declare and provide that the members of such company or body so associated as aforesaid shall be individually liable in their persons and property for the debts, contracts, engagements and liabilities of such company or body to such extent only per share as shall be declared and limited in and by such letters-patent; and the members of such company or body shall accordingly be individually liable for such debts, contracts, engagements and liabilities respectively to such extent only per share as in such letters-patent shall be declared and limited; such liability nevertheless to be enforced in such manner and subject to such provisions as are hereinafter contained.

Deed of partnership to be executed.

5. Every such company or body to which any such privileges or powers as hereinbefore mentioned shall be granted under the authority of this act shall be entered into or formed by deed of partnership or association, or an agreement in writing of that nature; and the undertaking shall by such deed or agreement be divided into a certain number of shares to be there specified; and in such deed or agreement, or in some schedule thereto, there shall be set forth the name or style of the said company or body, the names or styles of the members of the said company or body, the date of the commencement thereof, the business or purpose for which the said company or body is formed, and the principal or only place for carrying on such business; and in such deed or agreement there shall also be contained the appointment of two or more officers to sue or be sued on behalf of such company or body in manner hereinafter mentioned.

Return to be made as hereinafter mentioned of the granting of letters-patent and style of company.

6. Such company or body as aforesaid shall, within three calendar months after the grant of such letters-patent as aforesaid, make or cause to be made a return to such one of the offices for enrolment hereinafter mentioned as shall be required under the provisions of this act, containing the date of the grant of such letters-patent as aforesaid, the name or style of the said company or body, the business or purpose for which the said company or body is formed, the principal or only place for carrying on such business, the total number of shares in the said company or body (and each of which shares is to be distinguished by a separate number in regular succession), the amount to which each share shall render the holder thereof liable, the names and (except as to bodies politic) the places of abode of all the members thereof, and the distinctive number or numbers of the share or respective shares which each member holds; and such company or body shall also at the same time make a return of the names and descriptions of the officers appointed by such company or body to sue and be sued on behalf thereof in manner aforesaid;

(1) See sect. 24, *post*, p. 394.

such return to be made in the form in the Schedule (A.) to this act annexed.

Name of company not to be changed after registry.

7. During the continuance of any such company or body after it shall have been so registered no change shall be made in the name or style thereof; and if the principal or only place for carrying on the business of the said company or body shall be changed the said company or body shall within three calendar months after such change make or cause to be made a return to the said office as aforesaid of such change in the form in Schedule (B.) to this act annexed.

If place of business changed, return to be made.

When persons cease to be members of company or corporation, except by transfer of shares, or of change of name of member, company to make return within three months.

8. In case any person shall cease to be a member of such company or body (except by means of the transfer by deed or writing of any share therein), or in case of the addition of any person thereto (except by means of the transfer of any share as aforesaid), or of the change of the name of any member thereof by marriage or otherwise, the said company or body shall, within three calendar months after information shall be received by the said company or body of any person so ceasing as aforesaid, or of such change or addition as aforesaid, make or cause to be made a return to the said office as aforesaid, containing the names and places of abode of all persons having ceased to be members thereof (except as aforesaid), and the names and places of abode of all persons having become members thereof (except as aforesaid), and specifying any change in the name of any member thereof by marriage or otherwise; such return to be made in one of the forms in the Schedule (C.) to this act annexed, as the case may be.

On transfer of shares, notice to be given to the company or corporation by transferee.

9. On the transfer by deed or writing of any share in any such company or body as aforesaid, a notice in writing, specifying the date of such transfer, the distinguishing number of the share transferred, the name and (except in the case of a body politic) the place of abode of the person by whom or on whose behalf and of the name and (except as aforesaid) the place of abode of the person to whom such transfer is made, shall be given to the said company or body, by leaving the transfer, when executed by both parties, or some note or memorandum thereof signed by them, at the principal or only office of the said company or body.

Company or corporation to make return within three months after receiving notice of transfer.

10. In case of the transfer of any share in such company or body, the said company or body shall, within three calendar months after receiving such notice as aforesaid of such transfer, make or cause to be made a return to the said office as aforesaid, containing the date of such transfer, the distinguishing number of the share transferred, the name and (except in the case of a body politic) the place of abode of the person by whom or on whose behalf such transfer is made, and of the person to whom such transfer is made, in the form in Schedule (D.) to this act annexed; and such company or body are hereby required, on the request in writing of either of the parties, forthwith to make such return accordingly.

Any person having made payment in respect of a share in a company under any judgment

11. Where the extent per share of the liability of the individual members of any such company or body shall have been limited by letters-patent as aforesaid, it shall be lawful for any person who shall or may from time to time have advanced or paid any sum in consequence or by virtue of any execution or diligence issued against him in respect of any share in such company or body, under any judgment, decree, interlocutor or order to be obtained against any

7 Will. 4 & 1 Vict. c. 73, s. 11.

officer of the said company or body, or any member thereof in manner hereinafter mentioned, to make a return thereof to such office as aforesaid in the form in Schedule (E.) to this act annexed; and every such return shall be accompanied with a proper voucher or vouchers of the fact of such payment, without which the same shall not be registered as hereinafter mentioned.

against such company to make a return thereof to Court of Chancery.

Company to make return when repayment is made of money so advanced by any person.

12. If any sum or sums shall at any time be repaid by any such company or body as last aforesaid in respect of any such sum which may have been so advanced or paid by virtue of such execution or diligence, the said company or body shall forthwith make or cause to be made a return to such office as aforesaid, specifying the amount of such repayment, in the form in Schedule (F.) to this act annexed.

On death, resignation, or removal of officer appointed to sue and be sued on behalf of company or body, another to be appointed and return made.

13. In case of the death or resignation or removal of any officer appointed to sue and be sued on behalf of any company or body to be formed in pursuance of any of the provisions of this act, the said company or body shall forthwith appoint in his stead another officer to sue and be sued on behalf of such company or body, and shall, within three calendar months after the death, resignation or removal of such officer as aforesaid, make or cause to be made a return to the said office as aforesaid, containing as well the name and description of the person who has ceased to be such officer in manner aforesaid as the name and description of the officer who has been appointed to sue and be sued on behalf of such company or body; such return to be made in the form in Schedule (G.) to this act annexed.

Returns how to be signed and verified.

14. All returns to be made in manner aforesaid by such company or body shall be signed by one of such officers, and shall be verified by a declaration of such officer made pursuant to the provisions of the statute 5 & 6 Will. 4, c. 62, except that if there shall be no such officer, or such officer shall refuse to act, then such return shall be signed and verified as aforesaid by some member of the said company or body.

Return of names of members, &c. not to be rendered invalid by unintentional error.

15. Any return to be made in manner aforesaid of the name or place of abode of any original member of such company or body, or of any person to or in whom any share in such company or body shall be transferred or become vested, shall not be rendered invalid for the purposes of this act by any error or omission in the same, if the said company or body shall, within one calendar month after information of such error or omission shall be received by such company or body, cause a correct return to be made to the said office as aforesaid in the form in Schedule (F.) to this act annexed; provided always, that this clause shall not invalidate or prejudice any intermediate transaction or matter whatsoever which shall have *bonâ fide* taken place or proceeded upon the faith of such erroneous or defective return, nor shall the benefit of this clause extend to any error or omission which shall be fraudulent.

Returns to what office to be made respectively in England, Scotland or Ireland.

16. Where the principal or only place for carrying on the business of any such company or body as aforesaid shall be situated in any part of England or Wales, the returns hereinbefore directed shall be made to the Enrolment Office of the Court of Chancery in England; and where such principal or only place for carrying on such business shall be situate in any part of Scotland, such returns shall be made to his Majesty's General Registry Office at Edinburgh; and where such principal or only place for carrying on such business shall be

situated in any part of Ireland, such returns shall be made to the Enrolment Office of the Chancery in Ireland.

By whom returns are to be registered.

17. All such returns as are hereinbefore directed to be made to the Enrolment Office of the Court of Chancery in England shall be registered by the clerks of enrolments in chancery, or their deputy, and that all such returns as are hereinbefore directed to be made to the General Registry Office at Edinburgh shall be registered by the lord clerk register or his deputy, and all such returns as are hereinbefore directed to be made to the Enrolment Office of the Court of Chancery in Ireland shall be registered by the clerks of enrolments in chancery in Ireland, or their deputy, in books to be by them respectively kept for that purpose, and that an alphabetical index shall be kept of the names of such companies or bodies, with references to such returns, and that there shall be paid for the registering of each return a fee of sixpence per folio, and no more; and that any person shall be at liberty to inspect such books and index, and that there shall be paid for such inspection a fee of one shilling, and no more; and that any person shall be at liberty to require a copy of any such return, to be certified by the said clerks or their deputy, and that there shall be paid for such certificate a fee of one shilling and sixpence for each folio of such copy, and no more; and the day of the registration of every return to be made in pursuance of this act shall be written on such return by the said clerks or their deputy.

Certified copy of such return, &c. to be received in evidence.

18. A copy, so certified as aforesaid, of such return, including the date to be marked on such return, shall be received in evidence in all proceedings, whether civil or criminal, and shall also be received as evidence of the day of the registering thereof.

Regulations as to forms of returns and mode of keeping the register, &c. by whom to be made.

19. Such orders and directions as to the forms of the returns to be made in pursuance of this act, and the mode of keeping the register, and of making the index thereof, and of any other matters incidental thereto, as may be deemed expedient, may from time to time be made, altered, or varied as follows; that is to say, as regards the registration to be made in the Enrolment Office in the Court of Chancery in England, by the Lord Chancellor, Lord Keeper, or First Lord Commissioner of the Great Seal, and the Master of the Rolls, jointly; as regards the registration to be made in the General Registry Office in Edinburgh, by the Lord Clerk Register and Lords of Council and Session jointly; and as regards the registration to be made in the Court of Chancery in Ireland, by the Lord Chancellor of Ireland and Master of the Rolls in Ireland jointly.

No person entitled to share in profits till registered as a member.

20. No person becoming a member of any such company or body by the transfer of any share therein, or otherwise, shall be entitled to sue for or recover any share of the profits thereof, unless and until a return of the transfer or other fact whereby he shall so become a member shall be registered pursuant to the provisions hereinbefore contained.

Person ceasing to be a member to continue liable till transfer, &c. registered.

21. Any person ceasing to be a member of any such company or body, whether by the transfer of any share therein, or by death or otherwise, shall be considered for all purposes of liability as continuing a member of such company or body until a return of the transfer or other fact whereby he shall have so ceased to be a member shall be registered pursuant to the provisions hereinbefore contained.

Proceedings

22. No action, suit or proceeding, whether civil or criminal, com-

7 Will. 4 & 1 Vict. c. 73, s. 22.

commenced in the name of officer not to be abated by his death, &c. or by change of members of company.

menced either by or against any such company or body (whether in the name of one of the officers appointed to sue and be sued as aforesaid, or of some member of such company or body, in the case and in manner aforesaid), shall be abated or prejudiced by the death or by any act of such officer or person, or by the resignation or removal of such officer, either before or after the commencement of such action, suit or proceeding, or by any change in the members of such company or body by the transfer of shares or otherwise, but that the same shall be continued in the name of such officer or member (as the case may be) nothwithstanding such death or act, or such resignation or removal, and notwithstanding such change in the members of such company or body.

Evidence of officer or of member of company admissible.

23. In all such actions, suits and other proceedings, whether civil or criminal, the evidence of any such officer as aforesaid, or of any member of such company or body, shall be admissible in the like manner as if such officer or member were not an officer or member of such company or body.

Effect of judgments against company (1).

24. All judgments, decrees, interlocutors and orders obtained in any such actions, suits or other proceedings as aforesaid against such officer or member in manner aforesaid whether such member or officer respectively be party to such actions, suits or proceedings, as plaintiff, pursuer, petitioner or defendant or defender, shall have the same effect against the property and effects of such company or body, and also (to the extent hereinafter mentioned) against the persons, property and effects of the individual existing or former members thereof respectively, as if such judgments, decrees, interlocutors or orders had been obtained against such company or body in suits or proceedings to which all the persons liable as existing or former members of such company or body had been parties, and that execution or diligence, or executions or diligences shall be issued thereon accordingly: provided nevertheless, that where the extent per share of the liability of the individual members shall have been limited by any letters-patent as aforesaid, no such execution or diligence shall be issued against any such individual existing and former member of such company or body as aforesaid for a greater sum than the residue, if any, of the amount for which, by virtue of such letters-patent as aforesaid, such individual member shall be liable in respect of the share or shares then or theretofore held by him in the said company or body, after deducting therefrom the amount, if any, which shall appear by such register as aforesaid to have been advanced and paid in respect of such shares or any of them by himself or herself, or any previous or subsequent holder of

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(1) The mode of proceeding against individual shareholders is by writ of *scire facias*. See *ante*, p. 381.

A declaration in a *scire facias* was not bad for not showing whether the letters-patent, under which the defendant's company was formed, contained any declaration limiting the liability of the members; such limitation, if any existed, being matter which ought to be pleaded by the defendant. *Philipson* v. *Earl of Egremont*, 6 Q. B. 587; 14 L. J., Q. B. 25.

A plea that might be pleaded to the original action cannot be pleaded to the *sci. fa.* *Ib.*

But fraud and collusion between the plaintiff and nominal defendant to the original action would be a good defence. *Ib.*

the same shares or any of them, or the representatives of any such holder, under or by virtue of any former execution or diligence, and not repaid at the time of issuing such subsequent execution or diligence.

Bankruptcy of officer of company not to affect company or liabilities of members.

25. The bankruptcy, insolvency or stopping payment of any officer or member of such company or body in his individual capacity shall not be construed to be the bankruptcy, insolvency or stopping payment of such company or body; and that the property and effects of such company or body, and the persons, property and effects of the individual members or other individual members thereof (as the case may be), shall, notwithstanding such bankruptcy, insolvency or stopping payment, be liable to execution or diligence in the same manner as if such bankruptcy, insolvency or stopping payment had not taken place.

Service of notice on the company.

26. In all cases wherein it may be necessary for any person to serve any summons, demand or notice, or any writ or other proceeding at law or in equity, or otherwise, upon the said company or body, service thereof respectively on the clerk of the said company or body, or by leaving the same at the head office for the time being of the said company or body, or in case such clerk of the said office shall not be found or known, then service thereof on any agent or officer employed by the said company or body, or by leaving the same at the usual place of abode of such agent or officer, shall be deemed good and sufficient service of the same respectively on the said company or body.

Service of notice by the company.

27. In all cases wherein it may be necessary for the said company or body to give any summons, demand or notice of any kind whatsoever to any person or corporation, under the provisions or directions contained in this act, such summons, demand or notice may be given in writing, signed by the clerk, attorney or solicitor for the time being of the said company or body, without being required to be under the common seal of the said company or body.

Determination of company not to prevent the winding-up of their affairs (1).

28. In case of the determination of such company or body, such company or body shall nevertheless be considered as subsisting, and to be in all respects subject to the provisions of this act, so long and so far as any matters relating to such company or body shall remain unsettled, to the end and intent that such company or

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Repeal of charters by *sci. fa.*

(1) Letters-patent are repealed by a writ of *scire facias* which is founded on the record of the patent. *Rex* v. *Sir O. Butler*, 3 Lev. 220. It may be sued out either in the petty-bag office in chancery; 4 Inst. 88; 2 Saund. 74; or in the court of Queen's Bench; 4 Inst. 72; 2 Wms. Saund. 72; 6 Bac. Abr. *Sci. Fa.* (C. 3).

See further on this subject, Grant on Corporations, 42 et seq.; Foster on Sci. Fa., p. 12; also Book III., ch. ii.; Daniel's Ch. Pr., 4th ed., 1593 et seq.; Aycbourn's Practice, 12th ed., by Prentice, 1140, 1752, 1758; and 12 & 13 Vict. c. 109.

Surrenders of charters.

All corporations aggregate, except municipal corporations created by charter from the crown, can surrender, and the surrender, on being accepted by the crown and enrolled in chancery, is complete, and the corporation would in most instances thereupon be dissolved to all intents and purposes. See Grant on Corporations, p. 46. A surrender is void without acceptance

7 Will. 4 & 1 Vict. c. 73, s. 28.

body may do all things necessary to the winding-up of the concerns thereof, and that it may be sued and sue under the provisions of this act in respect of all matters relating to such company or body.

Duration of charters of incorporation may be limited.

29. It shall be lawful for her Majesty, her heirs and successors, in any charter of incorporation to be hereafter granted, to limit the duration thereof for any term or number of years, or for any other period whatsoever; and also in any charter of incorporation (whether in perpetuity or for any term or period), either by reference to this act or otherwise, to make the corporation thereby formed, and the officers and members thereof, subject to all of the provisions, liabilities and directions hereinbefore authorized to be imposed on or required from any unincorporated company or body, or its officers or members, and also to confer on such corporation or its members and officers all the powers or privileges hereinbefore authorized to be conferred on any unincorporated company or body, or its officers or members; and all the powers, provisions, clauses, matters and things hereinbefore contained in reference to unincorporated companies or bodies shall accordingly in such case, and so far as the same may be applicable, be considered to belong and apply to such corporation.

Limitations as to exemptions to be granted to companies by letters-patent.

30. Nothing in this act contained shall authorize or be construed to authorize her Majesty, her heirs and successors, by any such letters-patent, to exempt any company or body of persons associated as aforesaid from the necessity of entering into a deed of partnership, from making the return of the patent to the Enrolment Office of the Court of Chancery, from the necessity of carrying into execution the provisions of this act in respect to change of name or style of the company or body associated, in respect to the cessation, or to the addition, or to the change of name of any of the individuals of the company, or to the transfer of shares and to the notices to be given thereof, or to the payment of any sum by any shareholder on account of any preferment against such company or body, or to the returns to be made to the Enrolment Office of such payment, or of the repayment thereof, or from making a return to the said office of the name of the officer appointed by said company to sue and be sued on its behalf, in case of the death, resignation or removal of the one registered, or to exempt any company or body so associated from the provisions of this act in relation to the period at which its several members shall become entitled or shall cease to share in the profits thereof, the whole as required by the provisions of this act.

Act not to affect existing privileges.

31. Nothing in this act contained shall authorize or be construed to authorize the grant to any company or body of persons of any privilege in derogation of any exclusive privileges now enjoyed by any company or corporation under any act or acts of parliament.

Notice of application for

32. Whenever an application shall be made to her Majesty to grant letters-patent or a charter of incorporation to any company or

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and enrolment in due time. *Rex* v. *Osborne*, 4 East, 327; *Butler* v. *Palmer*, Salk. 191; *Piper* v. *Dennis*, Holt, 170; 12 Mod. 253.

A corporation having a capital or joint stock in which each member is individually interested will be restrained from surrendering their charter for the purpose of getting a new one altering the constitution of the body. *Ward* v. *Society of Attornies*, 1 Col. 370.

body of persons associated together for any purpose of trade, and such application shall have been referred by her Majesty to the Committee of Privy Council for Trade and Plantations, then, before any report shall be made to her Majesty, and before any such letters-patent or charter shall be granted, notice of such application shall be inserted by the parties applying three several times in the London Gazette and in one or more of the newspapers circulating within the county in which it is proposed that the principal place of business of such company shall be established, at intervals of not less than one week.

letters-patent to be inserted in the London Gazette, &c.

SCHEDULES TO WHICH THIS ACT REFERS,

SCHEDULE (A.), s. 6, *ante*, p. 390.

Return made pursuant to Statute Vict.

Date of Letters Patent.	Name of Company or Body.	Business or Purpose.	Place [*or* principal Place, *if more than one*] of Business.	Total Number of Shares.	Liability in respect of each Share.

[*Names and places of abode of all the members, and the distinctive numbers of the shares which each of them holds.*]

[*Names and descriptions of the officers appointed to sue and be sued on behalf of the company or body.*]

I (one of the above-named officers) do solemnly and sincerely declare that the above is a true return; and I make this solemn declaration conscientiously believing the same to be true, and by virtue of the provisions of an act made and passed in the fifth year of the reign of his late Majesty, intituled "An Act," &c. (1).

Dated this day of 18 .

[Declared, &c.] [*Signature.*]

7 Will. 4 & 1 Vict. c. 73.

SCHEDULE (B.), s. 7, *ante*, p. 391.

Return made pursuant to Statute Vict.

CHANGE OF PLACE OF BUSINESS.

Name of Company or Body.	Business or Purpose.	Former Place [*or* principal Place, *if more than one*] of Business.	Present Place [*or* principal Place] of Business.

I [*&c. as before.*]
[*Date.*]
[Declared, &c.] [*Signature.*]

SCHEDULE (C.), s. 8, *ante*, p. 391.

Return made pursuant to Statute Vict.

CHANGE OF MEMBERS.

Name of Company or Body.	Business or Purpose.	Place [*or* principal Place, *if more than one*] of Business.

[*Names and places of abode of all persons having ceased to be members (except by transfer of shares) since the last return. Dated the day of .*]

[*Names and places of abode of all persons who have become members (except by transfer of shares) since the last return. Dated the day of .*]

[*Former names and places of abode of persons whose names have been changed.*]

[*Present names and places of abode of persons whose names have been changed.*]

I [*&c. as before.*]
[*Date.*]
[Declared, &c.] [*Signature.*]

SCHEDULE (D.), s. 10, *ante*, p. 391.

Return made pursuant to Statute Vict.

TRANSFER OF SHARES.

Name of Company or Body.	Business or Purpose.	Place [*or* principal Place, *if more than one*] of Business.	
Name and Place of Abode of Person by whom Transfer is made.	Name and Place of Abode of Person to whom Transfer is made.	The distinctive Numbers of the Shares transferred.	Date of Transfer.

I [*&c. as before.*]
[*Date.*]
[Declared, &c.] [*Signature.*]

SCHEDULE (E.), s. 11, *ante*, p. 391.

Return made pursuant to Statute Vict.

PAYMENT BY INDIVIDUAL MEMBER.

Name of Company or Body.	Business or Purpose.	Place [*or* principal Place, *if more than one*] of Business.	
Name and Place of Abode of individual Member.	Distinctive Numbers of the Shares in respect of which Payment is made.	Sum paid in respect of each Share.	Total Amount paid under Exemptions or Diligence.

I [*&c. as before.*]
[*Date.*]
[Declared, &c.] [*Signature.*]

7 Will. 4 & 1 Vict. c. 73.

SCHEDULE (F.), ss. 12, 15, *ante*, p. 392.

Return made pursuant to Statute Vict.

PAYMENT TO INDIVIDUAL MEMBERS.

Name of Company or Body.	Business or purpose.	Place [*or* principal Place, *if more than one*] of Business.	
Name and Place of Abode of individual Member.	**Distinctive Numbers of the Shares in respect of which Repayment is made.**	**Sum repaid in respect of each Share.**	**Total Amount repaid to individual Member.**

I [*&c. as before.*]
[*Date.*]
[Declared, &c.] [*Signature.*]

SCHEDULE (G.), s. 13, *ante*, p. 392.

Return made pursuant to Statute Vict.

CHANGE OF OFFICER.

Name of Company or Body.	Business or Purpose.	Place [*or* principal Place, *if more than one*] of Business.

[*Name and description of the person who has ceased to be an officer to sue and be sued on behalf of the company or body since the last return. Dated .*]

[*Name and description of the officer appointed to sue and be sued on behalf of the company or body since the last return. Dated .*]

I [*&c. as before.*]
[*Date.*]
[Declared, &c.] [*Signature.*]

SCHEDULE (H.), s. 15, *ante*, p. 392.

Return made pursuant to Statute Vict.

CORRECTED RETURN.

[*Copy of former incorrect return.*]

(Copy.)

Amended return with correct names and descriptions [*in such of the preceding forms as are applicable to the case under the provisions of the foregoing act.*]

I [*&c. as before.*]
[*Date.*]
[Declared, &c.] [*Signature.*]

RAILWAY COMPANIES ARBITRATION ACT, 1859.

22 & 23 Vict. c. 56.

An Act to enable Railway Companies to settle their Differences with other Companies by Arbitration.

[13th August, 1859 (1).]

For the better providing for the settlement by arbitration of matters in which railway companies in the United Kingdom are mutually interested, be it enacted as follows, (that is to say,)

Short title. "Railway companies."

1. This act may for all purposes be cited as "Railway Companies Arbitration Act, 1859;" and the expression "railway companies" in this act extends to and includes all persons being the owners or lessees of, and all contractors working any railway upon which steam power is used.

Power for railway companies to refer matters to arbitration.

2. Any two or more railway companies, whether already or hereafter incorporated (in this act called "the companies"), from time to time, by writing under their respective common seals, may agree to refer and may refer to arbitration, in accordance with this act, any then existing or future differences, questions or other matters whatsoever in which they then are or thereafter shall be mutually interested, and which they might lawfully settle or dispose of by agreement between themselves, and may delegate to the person or persons to whom the reference is made any power to determine all or any of the terms of any contract to be made between the companies which the directors of the companies respectively might lawfully delegate to any committees of themselves respectively.

Power to alter or revoke agreements for reference.

3. The companies jointly, but not otherwise, from time to time, by writing under their respective common seals, may add to, alter or revoke any agreement for reference in accordance with this act theretofore entered into between the companies, or any of the terms, conditions or stipulations thereof.

Agreements to be carried into effect.

4. Every reference or agreement in accordance with this act, except so far as it is from time to time revoked or modified in accord-

(1) All the provisions of this act apply to arbitrations between companies and persons, in pursuance of "The Companies Act, 1862," and in the construction of such provisions "the companies" shall be deemed to include companies authorized by that act to refer disputes to arbitration. See sects. 72, 73 of that act, *ante*, p. 215.

ance with this act, shall bind the companies, and may and shall be carried into full effect.

Reference to a single arbitrator.

5. Where the companies agree, the reference shall be made to a single arbitrator.

Reference to two or more arbitrators.

6. Except where the companies agree that the reference shall be made to a single arbitrator, the reference shall be made as follows, to wit,

Where there are two companies the reference shall be made to two arbitrators;

Where there are three or more companies the reference shall be made to so many arbitrators as there are companies.

Appointment of arbitrators by companies.

7. Where there are to be two or more arbitrators, every company shall by writing under their common seal appoint one of the arbitrators, and shall give notice in writing thereof to the other company or companies.

Appointment of arbitrators by Board of Trade.

8. Where there are to be two or more arbitrators, if any of the companies fail to appoint an arbitrator within fourteen days after being thereunto requested in writing by the other company, or by the other companies or any of them, then, on the application of the companies or any of them, the board of trade, instead of the company so failing to appoint an arbitrator, may appoint an arbitrator; and the arbitrator so appointed shall for the purposes of this act be deemed to be appointed by the company so failing.

Appointment of arbitrators by companies to supply vacancies.

9. When the reference is made to two or more arbitrators, if before the matters referred to them are determined any arbitrator dies, or becomes incapable or unfit, or for seven consecutive days fails to act as arbitrator, the company by which he was appointed shall by writing under their common seal appoint an arbitrator in his place.

Appointment of arbitrators by Board of Trade to supply vacancies.

10. Where the company by which an arbitrator ought to be appointed in the place of the arbitrator so deceased, incapable, unfit or failing to act, fail to make the appointment within fourteen days after being thereunto requested in writing by the other company, or by the other companies or any of them, then, on the application of the companies or any of them, the board of trade may appoint an arbitrator; and the arbitrator so appointed by the board of trade shall for the purposes of this act be deemed to be appointed by the company so failing.

Appointment of arbitrator not revocable.

11. When any appointment of an arbitrator is made, the company making the appointment shall have no power to revoke the appointment, without the previous consent in writing of the other company, or every other company in writing under their common seal.

Appointment of umpire by arbitrators.

12. Where two or more arbitrators are appointed, they shall, before entering on the business of reference, appoint by writing under their hands an impartial and qualified person to be their umpire.

Appointment of umpire by Board of Trade.

13. If the arbitrators do not appoint an umpire within seven days after the reference is made to the arbitrators, then, on the application of the companies or any of them, the board of trade may appoint an umpire; and the umpire so appointed shall for the purposes of this act be deemed to be appointed by the arbitrators.

Appointment of umpire by arbitrators to supply vacancy.

14. Where two or more arbitrators are appointed, if before the matters referred to them are determined their umpire dies, or becomes incapable or unfit, or for seven consecutive days fails to act

22 & 23 Vict. c. 56, s. 14.

as umpire, the arbitrators shall by writing under their hands appoint an impartial and qualified person to be their umpire in his place.

Appointment of umpire by Board of Trade to supply vacancy.

15. If the arbitrators fail to appoint an umpire within seven days after notice in writing to them of the decease, incapacity, unfitness or failure to act of their umpire, then, on the application of the companies or any of them, the board of trade may appoint an umpire; and the umpire so appointed shall for the purposes of this act be deemed to be appointed by the arbitrators so failing.

Succeeding arbitrators and umpires to have powers of predecessors.

16. Every arbitrator appointed in the place of a preceding arbitrator, and every umpire appointed in the place of a preceding umpire, shall respectively have the like powers and authorities as his respective predecessor.

Reference to umpire.

17. Where there are two or more arbitrators, if they do not, within such a time as the companies agree on, or, failing such agreement, within thirty days next after the reference is made to the arbitrators, agree on their award thereon, then the matters referred to them, or such of those matters as are not then determined, shall stand referred to their umpire.

Power for arbitrators, &c. to call for books, &c., and administer oath.

18. The arbitrator, and the arbitrators, and the umpire respectively may call for the production of any documents or evidence in the possession or power of the companies respectively, or which they respectively can produce, and which the arbitrator, or the arbitrators, or the umpire may think necessary for determining the matters referred, and may examine the witnesses of the companies respectively on oath, and may administer the requisite oath; and in Scotland may grant diligence for the recovery of the documents or evidence, and for citing witnesses, and on application to the lord ordinary he may issue letters of supplement or other necessary writs in support of the diligence.

Procedure in the arbitration.

19. Except where and as the companies otherwise agree, the arbitrator, and the arbitrators, and the umpire respectively may proceed in the business of the reference in such manner as he and they respectively shall think fit.

Arbitration may proceed in absence of companies.

20. The arbitrator, and the arbitrators, and the umpire respectively may proceed in the absence of all or any of the companies in every case in which, after giving notice in that behalf to the companies respectively, the arbitrator, or the arbitrators or the umpire shall think fit so to proceed.

Several awards may be made (1).

21. The arbitrator, and the arbitrators, and the umpire respectively may, if he and they respectively think fit, make several awards, each on part of the matters referred, instead of one award on all the matters referred; and every such award on part of the matters shall for such time as shall be stated in the award, the same being such as shall have been specified in the agreement for arbitration, or in the event of no time having been so specified, for any time which the arbitrator may be legally entitled to fix, be binding as to all the matters to which it extends, and as if the matters awarded on were all the matters referred, and that notwithstanding the other matters or any of them be not then or thereafter awarded on.

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(1) See n. (1), *post*, p. 405.

Awards made in due time to bind all parties (1).

22. The award of the arbitrator, or of the arbitrators, or of the umpire, if made in writing under his or their respective hand or hands, and ready to be delivered to the companies within such a time as the companies agree on, or, failing such agreement, within thirty days next after the matters in difference are referred to (as the case may be) the arbitrator, or the arbitrators, or the umpire, shall be binding and conclusive on all the companies.

Power for umpire to extend period for making his award.

23. Provided always, that (except where and as the companies otherwise agree), the umpire, from time to time by writing under his hand, may extend the period within which his award is to be made; and if it be made and ready to be delivered within the extended time, it shall be as valid and effectual as if made within the prescribed period.

Awards not to be set aside for informality.

24. No award made on any arbitration in accordance with this act shall be set aside for any irregularity or informality.

Awards to be obeyed.

25. Except only so far as the companies bound by any award in accordance with this act from time to time otherwise agree, all things by every award in accordance with this act lawfully required to be done, omitted or suffered shall be done, omitted or suffered accordingly.

Agreements, arbitrations and awards to have effect (2).

26. Full effect shall be given by all the superior courts of law and equity in the United Kingdom, according to their respective jurisdiction, and by the companies respectively, and otherwise, to all agreements, references, arbitrations and awards in accordance with this act; and the performance or observance thereof may, where the courts think fit, be compelled by distress infinite on the property of the companies respectively, or by any other process against the companies respectively or their respective property that the courts or any judge thereof shall direct, and where requisite frame for the purpose.

Costs of arbitration and award.

27. Except where and as the companies otherwise agree, the costs of and attending the arbitration and the award shall be in the discretion of the arbitrator, and the arbitrators and the umpire respectively.

Stamps.

(1) By 28 & 29 Vict. c. 96, s. 3, the following scale of stamp duties is chargeable on awards:—

		£	s.	d.
Where the amount or value of the matter in dispute shall not exceed	£5 ..	0	0	3
Where it shall exceed £5 and not exceed	10 ..	0	0	6
10 „	20 ..	0	1	0
20 „	30 ..	0	1	6
30 „	40 ..	0	2	0
40 „	50 ..	0	2	6
50 „	100 ..	0	5	0
100 „	200 ..	0	10	0
200 „	500 ..	0	15	0
500 „	750 ..	1	0	0
750 „	1,000 ..	1	5	0
And where it shall exceed £1,000, and in all other cases not above provided for		1	15	0

(2) An agreement, coming within sect. 2 of this act, to refer matters to arbitration is (under sect. 26) obligatory on, and ousts the jurisdiction of the court of chancery. *Watford and Rickmansworth R. Co.* v. *London and North Western R. Co.*, L. R., 8 Eq. 231; 38 L. J., Ch. 449; 17 W. R. 814.

22 & 23 Vict. c. 56, s. 28.

28. Except where and as the companies otherwise agree, and if and so far as the award does not otherwise determine, the costs of and attending the arbitration and the award shall be borne and paid by the companies in equal shares, and in other respects the companies shall bear their own respective costs.

Payment of costs.

Submission to arbitration to be made a rule of court.

29. The submission to any arbitration in accordance with this act may at any time be made a rule of any of her Majesty's superior courts of record at Westminster, or, as the case may be, at Dublin, on the application of any party interested; and the court may remit the matter to the arbitrator, or to the arbitrators, or to the umpire, with any directions the court think fit.

DOCUMENTARY EVIDENCE ACT, 1845.

8 & 9 Vict. c. 113.

An Act to facilitate the Admission in Evidence of certain official and other Documents. [8th August, 1845.]

Certain documents to be received in evidence without proof of seal or signature, &c. of person signing the same.

I. That whenever by any act now in force or hereafter to be in force any certificate, official or public document, or document or proceeding of any corporation or joint stock or other company, or any certified copy of any document, bye-law, entry in any register or other book, or of any other proceeding, shall be receivable in evidence of any particular in any court of justice, or before any legal tribunal, or either house of parliament, or any committee of either house, or in any judicial proceeding, the same shall respectively be admitted in evidence, provided they respectively purport to be sealed or impressed with a stamp, or sealed and signed, or signed alone, as required, or impressed with a stamp and signed, as directed by the respective acts made or to be hereafter made, without any proof of the seal or stamp, where a seal or stamp is necessary, or of the signature or of the official character of the person appearing to have signed the same, and without any further proof thereof in every case in which the original record could have been received in evidence.

Persons forging seal, stamp, or signature of certain documents, or print any private act with false purport, guilty of felony.

IV. Provided always, and be it enacted, that if any person shall forge the seal, stamp, or signature of any such certificate, official or public document, or document or proceeding of any corporation or joint-stock or other company, or of any certified copy of any document, bye-law, entry in any register or other book, or other proceeding as aforesaid, or shall tender in evidence any such certificate, official or public document, or document or proceeding of any corporation or joint stock or other company, or any certified copy of

any document, bye-law, entry in any register or other book, or of any other proceeding, with a false or counterfeit seal, stamp, or signature thereto, knowing the same to be false or counterfeit, whether such seal, stamp, or signature be those of or relating to any corporation or company already established, or to any corporation or company to be hereafter established, or if any person shall forge the signature of any such judge as aforesaid to any order, decree, certificate, or other judicial or official document, or shall tender in evidence any order, decree, certificate, or other judicial or official document with a false or counterfeit signature of any such judge as aforesaid thereto, knowing the same to be false or counterfeit, or if any person shall print any copy of any private act or of the journals of either house of parliament, which copy shall falsely purport to have been printed by the printers to the crown, or by the printers to either house of parliament, or by any or either of them, or if any person shall tender in evidence any such copy, knowing that the same was not printed by the person or persons by whom it so purports to have been printed, every such person shall be guilty of felony, and shall upon conviction be liable to transportation for seven years, or to imprisonment for any term not more than three nor less than one year, with hard labour: provided also, that whenever any such document as before mentioned shall have been received in evidence by virtue of this act, the court, judge, commissioner, or other person officiating judicially who shall have admitted the same shall, on the request of any party against whom the same is so received, be authorized at its or at his own discretion, to direct that the same shall be impounded, and be kept in the custody of some officer of the court or other proper person, until further order touching the same shall be given, either by such court, or the court to which such master or other officer belonged, or by the persons or person who constituted such court, or by some one of the equity or common law judges of the superior courts at Westminster, on application being made for that purpose.

INLAND REVENUE ACT, 1867.

30 & 31 Vict. c. 90 (*a*).

An Act to alter certain Duties and to amend the Laws relating to the Inland Revenue. [12th August, 1867.]

Stamp duties granted on certain documents.

20. From and after the passing of this act the following documents shall be charged with the stamp duty of one penny; that is to say,

Letters of allotment.

Letter of allotment of any share of any company or proposed company, or in respect of any loan raised or proposed to be raised by any such company, or letter of allotment issued or delivered in the United Kingdom of any share of any foreign or colonial company or proposed company, or in respect of any loan raised or proposed to be raised by or on behalf of any foreign or colonial government, state, company, or corporation; and the term "Letter of Allotment" hereinbefore used shall include letter of renunciation or other document having the effect of a letter of allotment in favour of any person:

Scrip certificates.

Scrip certificate or other document entitling any person to become the proprietor of any share of any company or proposed company, or scrip certificate or other document issued or delivered in the United Kingdom entitling any person to become the proprietor of any share of any foreign or colonial company or proposed company:

Scrip.

Scrip or other document denoting or intended to denote the right of any person as a subscriber in respect of any loan raised or proposed to be raised by any company, or any scrip or other document issued or delivered in the United Kingdom denoting or intended to denote the right of any person as a subscriber in respect of any loan raised or proposed to be raised by or on behalf of any foreign or colonial government, state, company, or corporation.

Penalty for signing, &c., documents chargeable with duty before stamped.

21. If any person shall sign, grant, issue, or deliver any document chargeable with stamp duty under the provisions of the section lastly hereinbefore contained, before the same shall be duly stamped for denoting the said duty, he shall forfeit the sum of twenty pounds.

(*a*) See *ante*, p. 24.

INDICTABLE OFFENCES (FORGERY) ACT, 1861.

24 & 25 Vict. c. 98.

An Act to consolidate and amend the Statute Law of England and Ireland relating to indictable Offences by Forgery. [6th August, 1861.]

Forging transfer of certain stock, and power of attorney relating thereto.

2. Whosoever shall forge, or alter, or shall offer, utter, dispose of, or put off, knowing the same to be forged or altered, any transfer of any share or interest of or in any stock, annuity, or other public fund which now is or hereafter may be transferable at the Bank of England or at the Bank of Ireland, or of or in the capital stock of any body corporate, company, or society which now is or hereafter may be established by charter, or by, under, or by virtue of any act of parliament, or shall forge or alter, or shall offer, utter, dispose of, or put off, knowing the same to be forged or altered, any power of attorney or other authority to transfer any share or interest of or in any such stock, annuity, public fund, or capital stock, or to receive any dividend or money payable in respect of any such share or interest, or shall demand or endeavour to have any such share or interest transferred, or to receive any dividend or money payable in respect thereof, by virtue of any such forged or altered power of attorney or other authority, knowing the same to be forged or altered, with intent in any of the cases aforesaid to defraud, shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the court, to be kept in penal servitude for life or for any term not less than three years,—or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement.

Personating the owner of certain stock, and transferring or receiving or endeavouring to transfer or receive the dividends.

3. Whosoever shall falsely and deceitfully personate any owner of any share or interest of or in any stock, annuity, or other public fund which now is or hereafter may be transferable at the Bank of England, or at the Bank of Ireland, or any owner of any share or interest of or in the capital stock of any body corporate, company, or society which now is or hereafter may be established by charter, or by, under, or by virtue of any act of parliament, or any owner of any dividend or money payable in respect of any such share or interest as aforesaid, and shall thereby transfer or endeavour to transfer any share or interest belonging to any such owner, or thereby receive or endeavour to receive any money due to any such owner, as if such offender were the true and lawful owner, shall be guilty of felony,

24 & 25 Vict. c. 98, s. 3.

and being convicted thereof shall be liable, at the discretion of the court, to be kept in penal servitude for life or for any term not less than three years,—or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement.

Forging attestation to power of attorney for transfer of stock, &c.

4. Whosoever shall forge any name, handwriting, or signature purporting to be the name, handwriting, or signature of a witness attesting the execution of any power of attorney or other authority to transfer any share or interest of or in any such stock, annuity, public fund, or capital stock as is in either of the last two preceding sections mentioned, or to receive any dividend or money payable in respect of any such share or interest, or shall offer, utter, dispose of, or put off any such power of attorney or other authority, with any such forged name, handwriting, or signature thereon, knowing the same to be forged, shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the court, to be kept in penal servitude for any term not exceeding seven years and not less than three years,—or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement.

FOREIGN COMPANIES.[1]

Convention between her Majesty and the Emperor of the French, relative to Joint Stock Companies (*a*). *Signed at Paris, April* 30, 1862. *Ratifications exchanged at Paris, May* 15, 1862.

Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, and his Majesty the Emperor of the French, having

Power of suing and being sued.

(1) It is thought that any association or body capable of suing and being sued in the courts of its own country (provided the government of that country be recognized by and at peace with this country, *City of Berne* v. *Bank of England*, 9 Ves. 347) can sue and be sued here.

Assignee of chose in action.

In the older cases foreign assignees of a *chose in action*, though capable of suing in their own country, have not been allowed to sue in the courts of common law in their own names; but it seems the rule is otherwise now. See *Alison* v. *Furnival*, 1 Crom. M. & R. 277; Story's Conflict of Laws, ss. 365, 366.

American law.

In the courts of the United States of North America it seems a foreign

(*a*) There is a similar convention between her Majesty and the King of Belgium. Signed at London, 13th November, 1862. Ratifications exchanged at London, December 8th, 1862. London Gazette, 9th December, 1862, pp. 62—66; Solicitors' Journal, 13th December, 1862, p. 112.

judged it expedient to come to an understanding in order to define, within their respective dominions and possessions, the position of commercial, industrial and financial companies and associations con-

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corporation can sue only in the character of its members. 2 Kent's Commentaries, 11th ed. p. 333.

Suits by foreign governments:

As instances of suits by bodies unknown to the English law, see *United States of America* v. *M'Rae*, L. R., 3 Ch. 75; 37 L. J., Ch. 129; *United States of America* v. *Wagner*, 36 L. J., Ch. 624; L. R., 2 Ch. 582.

by foreign companies.

"A foreign company has a *locus standi* here; and so no doubt has an English company in a foreign country. We make no inquiry into the constitution of a foreign company any more than we should into the generation of an individual suing here." *Per* Erle, C. J., *Branley* v. *South Eastern R. Co.*, 12 C. B., N. S. 70.

Foreign trading corporations may sue under their name of reputation. *Dutch East India Co.* v. *Van Nayers*, Str. 612; *Henriques* v. *Dutch West India Co.*, 2 Lord Raymond, 1532; 1 Str. 612; 2 Str. 807.

A Spanish bank sued on a bill of exchange. It was put to the jury whether it was the same bank that was incorporated by the king of Spain. *National Bank of St. Charles* v. *De Bernales*, 1 Car. & P. 579.

As instances of actions and suits by and against foreign incorporated companies, see *South Carolina Bank* v. *Case*, 8 B. & C. 427; *Lewis* v. *Baldwin*, 11 Beav. 153; *Sudlow* v. *Dutch Rhenish R. Co.*, 21 Beav. 43; *Maclaren* v. *Stainton*, 16 Beav. 279; *Mackenzie* v. *Sligo and Shannon R. Co.*, 8 Q. B. 862; *Welland R. Co.* v. *Blake*, 6 H. & N. 410.

As instances of the winding-up of foreign companies, see *ante*, p. 296.

Place of residence.

A foreign company carrying on business in England is considered resident in this country for the purpose of being served with notice of legal proceedings. *Carron Iron Co.* v. *Maclaren*, 5 H. L. 416. Compare *Taylor* v. *Cromland Gas Co.* and other cases, *ante*, p. 21.

Liability of individual shareholders.

The liability of individual shareholders of foreign companies on the contracts of their companies depends on the law of the place where the contract forming the copartnership was made. See *Bank of Australia* v. *Harding*, 9 C. B. 661; 19 L. J., C. P. 345; *Bank of Australia* v. *Nias*, 16 Q. B. 717; *Kelsall* v. *Marshall*, 1 C. B., N. S. 246, *ante*, p. 283.

Sect. 73 of the Winding-up Act, 1848, provided that where a company was being wound up no action should be proceeded with against the company or shareholders until after proof of the debts. An action was brought in Scotland against a shareholder: the court sisted procedure until application was made by the pursuer under the winding-up. *Edinburgh and Glasgow Bank* v. *Ewan*, 14 Scotch Court of Session Cases, 2nd series, 547. Lord Fullerton said, "I am clearly of opinion that we must give effect to sect. 73 of the statute.

"Not that I think that the statute extends to Scotland as a direct act of legislation. It clearly does not. But then there is as little doubt that it is a valid act of legislation in relation to an English contract of copartnery, and as the pursuer's claim against these individual defenders solely through the medium of that English contract, they must be bound by the conditions attached to it by the law of the domicile of the contract.

"Then if an English statute be passed declaring that no partners of a joint stock company should be personally or individually liable beyond certain limits or should not be liable at all, it cannot surely be doubted that we should be bound to give effect to those provisions, not because the statute was anything but an English statute, but that being an English statute it regulated or limited the liabilities of the individual partners, and that consequently we, in determining the rights of parties necessarily and exclusively founding on the terms of the English contract of copartnery as against the individual defenders, would be bound to expound the law of

stituted and authorized in conformity with the laws in force in either of the two countries, have resolved to conclude a convention for that purpose, and have named as their plenipotentiaries, that is to say:

Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, the Right Honourable Henry Richard Charles Earl Cowley, her Majesty's ambassador extraordinary and plenipotentiary to the Emperor of the French;

And his Majesty the Emperor of the French, M. Edouard Antoine Thouvenel, senator, his minister and secretary of state for the department for foreign affairs:

Who, after having communicated to each other their respective full powers, found in good and due form, have agreed upon and concluded the following articles:—

ART. I.—The high contracting parties declare that they mutually grant to all companies and other associations, commercial, industrial or financial, constituted and authorized in conformity with the laws in force in either of the two countries, the power of exercising all their rights, and of appearing before the tribunals, whether for the purpose of bringing an action or for defending the same, throughout the dominions and possessions of the other power, subject to the sole condition of conforming to the laws of such dominions and possessions.

ART. II.—It was agreed that the stipulations of the preceding article shall apply as well to companies and associations constituted and authorized previously to the signature of the present convention, as to those which may subsequently be so constituted and authorized.

ART. III.—The present convention is concluded without limit as to duration. Either of the high powers shall, however, be at liberty to terminate it by giving to the other a year's previous notice. The two high powers, moreover, reserve to themselves the power to introduce into the convention, by common consent, any modifications which experience may show to be desirable.

ART. IV.—The present convention shall be ratified, and the ratifications shall be exchanged at Paris in fifteen days, or sooner if possible.

In witness whereof the respective plenipotentiaries have signed the same, and have affixed thereto the seals of their arms.

Done in duplicate at Paris, the 30th of April, 1862.

(L.S.) COWLEY,
(L.S.) THOUVENEL.

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that contract according to the law of the country in which it had its local existence.

"Now here in the same way a statute, no doubt properly English, lays down certain conditions as indispensable to the prosecution of any action by creditors against contributories, *i. e.*, persons in the situation of the defenders. The pursuers do and must found on the English contract, they have no other foundation for their case, consequently they must be affected by the conditions validly attached to the contract by the *lex loci contractus*."

See further, Savigny on Private International Laws, by Guthrie, p. 190; 3 Burge's Com. on Col. & For. Law, pt. 2, ch. 20; Story's Conflict of Laws, s. 282.

GENERAL ORDER AND RULES

OF THE

HIGH COURT OF CHANCERY,

To regulate the mode of proceeding under "The Companies Act, 1862." (*Issued by the Lord High Chancellor, Tuesday, 11th November*, 1862.)

THE Right Honorable RICHARD BARON WESTBURY, Lord High Chancellor of Great Britain, with the advice and consent of the Right Honorable Sir JOHN ROMILLY, Master of the Rolls, the Honorable the Vice-Chancellor Sir RICHARD TORIN KINDERSLEY, the Honorable the Vice-Chancellor Sir JOHN STUART, and the Honorable the Vice-Chancellor Sir WILLIAM PAGE WOOD, doth hereby, in pursuance and execution of the powers given by the statute 25th and 26th Victoria, chapter 89 (1), and of all other powers and authorities enabling him in that behalf, order and direct in manner following:

PETITION TO WIND UP COMPANY (2).

Title of petition.

1. Every petition for the winding-up of any company by the court, or subject to the supervision of the court, shall be intituled in the matter of "The Companies Act, 1862" (3), and of the company to which such petition shall relate, describing the company by its most usual style or firm.

Advertisements (4).

2. Every such petition shall be advertised seven clear days before the hearing, as follows (5):

(1.) In the case of a company whose registered office, or if

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(1) See C. A. 1862, sect. 170, *ante*, p. 283.

(2) See C. A. 1862, sects. 82, 148, *ante*, pp. 223, 265.

(3) Petitions, and other proceedings in a winding-up, are now to be intituled "The Companies Acts, 1862, 1867." General Order of March, 1868, rule 1, *post*.

(4) See form No. 1, *post*, p. 439.

Effect of advertisement.

(5) A person presented a petition to wind up a company after

Rule 2.

there shall be no such office, then whose principal or last known principal place of business is or was situate within ten miles from Lincoln's Inn Hall, once in the London Gazette and once at least in two London daily morning newspapers.

(2.) In the case of any other company once in the London Gazette and once at least in two local newspapers circulating in the district where such registered office, or principal or last known principal place of business, as the case may be, of such company is or was situate.

The advertisement shall state the day on which the petition was presented, and the name and address of the petitioner, and of his solicitor and London agent (if any).

Service.

3. Every such petition shall, unless presented by the company, be served at the registered office, if any, of the company, and if no registered office, then at the principal or last known principal place of business of the company, if any such can be found, upon any member, officer or servant of the company there, or in case no such member, officer or servant can be found there, then by being left at such registered office or principal place of business, or by being served on such member or members of the company as the court may direct; and every petition for the winding-up of a company subject to the super-

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other petitions for the same purpose had been advertised. The petition was brought to a hearing on the question of costs, after an order had been made on the other petitions. The petitioner had to pay the costs. *Accidental and Marine Insurance Co., e.p. Rasch*, 36 L. J., Ch. 75.

A petition was advertised in two London papers on the 8th, and in the London Gazette on the 11th. Another petition was presented on the 11th in a different branch of the court. It was held not to have been improperly presented, and, on its coming on to be heard first, an order was made on it. *British and Foreign Gas Generating Co.*, 13 W. R. 649.

Errors in advertising.

Where a petition could not be heard on the day appointed by advertisement, by reason of the advertisement not having been inserted in proper time, the petition was allowed to stand over a fortnight, with liberty to insert fresh advertisements. *London and Westminster Wine Co.*, 1 H. & M. 561; 12 W. R. 44.

A petition was advertised in one London paper instead of two; the mistake was brought to the notice of the court after a winding-up order had been made; the proper advertisements were directed to be made; the winding-up order to be drawn up seven days after the advertisement. *London India Rubber Co.*, 14 W. R. 527.

vision of the court, shall also be served upon the liquidator (if any) appointed for the purpose of winding-up the affairs of the company (1).

Evidence.

4. Every petition for the winding-up of any company by the court, or subject to the supervision of the court, shall be verified by an affidavit referring thereto, in the form or to the effect set forth in form No. 2 in the third schedule hereto; such affidavit shall be made by the petitioner, or by one of the petitioners, if more than one, or, in case the petition is presented by the company, by some director, secretary or other principal officer thereof; and shall be sworn after (2) and filed within four days after the petition is presented (3), and such

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Service.

(1) Where a creditor of a joint stock company was unable to effect service of a petition for winding-up by reason of there being no registered office or place of business belonging to the company, the court directed a copy of the petition to be served on all the directors and two or three of the principal shareholders. *The Inventors' Association, e.p. Chifferiel*, 6 N. R. 349; 13 W. R. 1015.

The registered office of a company was shut up; V.-C. Wood directed a copy of a petition for winding-up the company to be dropped into the letter-box of the office, and other copies to be served on the solicitor and one of the directors of the company. *London and Westminster Wine Co.*, 3 N. R. 26; 12 W. R. 6.

Where a company had a registered office which was closed and had never commenced business, V.-C. Kindersley ordered service on the chairman and general manager. *National Credit and Exchange Co.*, 3 N. R. 26; 12 W. R. 6.

In another case service was directed on any five of the directors. *Unity General Assurance Association*, 11 W. R. 355.

In *Thames Mutual Insurance Co.* (15 L. T. 263), service was ordered on the secretary, when found, and on certain agents.

Where the only persons connected with a company appeared to be the seven subscribers to the memorandum of association, service was directed to be made on all of them. *Great Cwmsymlog Mining Co.*, 16 W. R. 270.

Where a company was never registered, but had had an office, service at the place where the office had been was sufficient. *City of London and Colonial Financial Association*, 36 L. J., Ch. 832.

(2) Where the affidavit had been sworn before the presentation of the petition, the affidavit was allowed to be re-sworn, and the order to wind up which had been pronounced was dated subsequently. *Western Benefit Building Society*, 33 Beav. 368; 33 L. J., Ch. 179.

(3) Where the petitioner was resident in Dantzig the time was increased to ten days. *Anglo-Danish Steam Navigation Co.*, 15 L. T. 407; 15 W. R. 105.

In *The Patent Screwed Boot Co.* (32 Beav. 142), in *The Kentish Royal Hotel Co.* (5 N. R. 423; 13 W. R. 448), and *Great Cambrian*

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affidavit shall be sufficient *primâ facie* evidence of the statements in the petition (1).

Price of copies of petition.

5. Every contributory or creditor of the company shall be entitled to be furnished, by the solicitor to the petitioner, with a copy of the petition, within twenty-four hours after requiring the same, on payment at the rate of fourpence per folio of seventy-two words for such copy.

ORDER TO WIND UP COMPANY (2).

Advertisement.

6. Every order for the winding-up of a company by the court, or subject to its supervision, shall, within twelve days after the date thereof, be advertised by the petitioner once in the London Gazette, and shall be served upon such persons (if any) and in such manner as the court may direct (3).

Further proceedings and conduct thereof.

7. A copy of every order for winding-up a company, certified to be a true copy thereof as passed and entered, shall be left by the petitioner at the chambers of the judge, within ten days after the same shall have been passed and entered, and in default thereof any other person interested in the winding-up may leave the same, and the judge may, if he thinks fit, give the carriage and the prosecution to such person. Upon such copy being left a summons shall be taken out to proceed with the winding-up of the company, and be served upon all parties who may have appeared upon the hearing of the petition. Upon the return of such summons, a time shall, if the judge thinks fit, be fixed for the appointment of an official liquidator, and for the proof of debts, and for the list of contributories to be brought in, and directions may be given as to the advertisements to be issued for all or any of such purposes, and generally as to the proceedings and the parties to attend thereon. The

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Gold Mining Co. (12 L. T. 587), winding-up orders were made, though the affidavits were not made within the four days.

Twelve days had expired before the order was advertised, owing to delay in obtaining the order; the order was allowed to be post-dated. *Doncaster Permanent Building Society*, 11 W. R. 459.

In another case the court extended the time for advertising. *East Cambrian Gold Mining Co.*, 12 L. T. 587.

(1) The affidavit is not in all cases sufficient evidence of the facts in the petition. *St. David's Gold Mining Co.*, 14 W. R. 755.

(2) See C. A. 1862, sects. 82, 85, 86, 147, *ante*, pp. 223—226, 264.

(3) See Form of Advertisement, *post*, No. 5, p. 440.

proceedings under the order shall be continued by adjournment, and, when necessary, by further summons, and any such direction as aforesaid may be given, added to or varied, at any subsequent time, as may be found necessary.

OFFICIAL LIQUIDATOR (1).

Mode of appointment.

8. The judge may appoint a person to the office of official liquidator, without previous advertisement or notice to any party, or fix a time and place for the appointment of an official liquidator, and may appoint or reject any person nominated at such time and place, and appoint any person not so nominated.

Advertisement.

9. When a time and place are fixed for the appointment of an official liquidator, such time and place shall be advertized in such manner as the judge shall direct, so that the first or only advertisement shall be published within fourteen days and not less than seven days before the day so fixed (2).

Security.

10. Every official liquidator shall give security by entering into a recognizance with two or more sufficient sureties (3), in such sum as the judge may approve; and the judge may, if he shall think fit, accept the security of any guarantee society established by charter or act of parliament in England, in lieu of the security of such sureties as aforesaid, or of any of them.

Order of appointment and further directions.

11. The official liquidator shall be appointed by order (4); and unless he shall have given security, a time shall be fixed by such order within which he is to do so; and the order shall fix the times or periods at which the official liquidator is to leave his accounts of his receipts and payments at the judge's chambers (5), and shall direct that all monies to be received shall be paid into the Bank of England, immediately after the receipt thereof, to the account of the official liquidator of the company, and an account shall be opened there accordingly; and an office copy of the order shall be lodged at the Bank of England (6).

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(1) See C. A. 1862, sects. 85, 92, 93, 103, 104, *ante*, pp. 223, 233. 234, 242.
(2) See forms, Nos. 6, 7, *post*, p. 441.
(3) See form, No. 10, *post*, p. 442.
(4) See form, No. 8, *post*, p. 441.
(5) See Rule 19, *post*, p. 419.
(6) See Rules 36—44, and forms, Nos. 10, 11, 14, *post*, pp. 424, 442, 443, 444.

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Certificate of security.

12. When an official liquidator has given security pursuant to the directions in the order appointing him, the same shall be certified by the chief clerk, as in the case of a receiver appointed in a cause subject to giving security.

Proof of competency of sureties.

13. The official liquidator shall, on each occasion of passing his account (1), and also whensoever the judge may so require, satisfy the judge that his sureties are living, and resident in Great Britain, and have not been adjudged bankrupt or become insolvent, and in default thereof he may be required to enter into fresh security within such time as shall be directed.

Advertisement.

14. Every appointment of an official liquidator shall be advertized, in such manner as the judge shall direct, immediately after he has been appointed, and has given security (2).

Application for provisional appointment.

15. Where it is desired to appoint provisionally an official liquidator (3), an application for that purpose may, at any time after the presentation of the petition for winding-up the company, be made by summons, without advertisement or notice to any person, unless the judge shall otherwise direct; and such provisional liquidator may, if the judge shall think fit, be appointed without security.

Change of liquidator.

16. In case of the death, removal or resignation of an official liquidator, another shall be appointed in his room, in the same manner as directed in the case of a first appointment, and the proceedings for that purpose may be taken by such party interested as may be authorized by the judge to take the same.

Books and accounts.

17. The official liquidator shall, with all convenient speed after he is appointed, proceed to make up, continue, complete and rectify the books of account of the company; and shall provide and keep such books of account as shall be necessary, or as the judge may direct, for the purposes aforesaid, and for showing the debts and credits of the company, including a ledger which shall contain the separate accounts of the contributories, and in which every contributory shall be debited from time to time with the amount payable by him in respect of any call to be made as provided by the said act and these rules.

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(1) See Rule 19, *post*, p. 419.
(2) See form, No. 15, *post*, p. 444.
(3) See C. A. 1862, sects. 85, 92, *ante*, pp. 225, 233; Rule 59, Form, No. 9, *post*, pp. 431, 442.

Remuneration (1).

18. The official liquidator shall be allowed in his accounts, or otherwise paid, such salary or remuneration as the judge may from time to time direct, including any necessary employment of assistants or clerks by the official liquidator, to which regard shall be had; and such salary or remuneration may either be fixed at the time of his appointment, or at any time thereafter, as the judge may think fit. Every allowance of such salary or remuneration, unless made at the time of his appointment, or upon passing an account, shall be made upon application for that purpose by the official liquidator, on notice to such persons (if any), and supported by such evidence as the judge shall require; nevertheless, the judge may from time to time allow any sum he may think fit to the official liquidator on account of the salary or remuneration to be thereafter allowed.

Passing accounts.

19. The accounts of the official liquidator shall be left at the judge's chambers at the times directed by the order appointing him, and at such other times as may from time to time be required by the judge, and such accounts shall, upon notice to such parties (if any) as the judge shall direct, be passed and verified in the same manner as receivers' accounts.

PROOF OF DEBTS (2).

Advertisement.

20. For the purpose of ascertaining the debts and claims due from the company, and of requiring the creditors to come in and prove their debts or claims, an advertisement shall be issued at such time as the judge shall direct; and such advertisement shall fix a time for the creditors to send their names and addresses, and the particulars of their debts or claims, and the names and addresses of their solicitors (if any) to the official liquidator, and appoint a day for adjudicating thereon (3).

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(1) See regulation as to remuneration, *post*.

(2) See C. A. 1862, sects. 107, 158, *ante*, pp. 242, 290.

A creditor seeking to prove must produce all documents under which he claims, if required. *Constantinople and Alexandra Hotels Co.*, 14 W. R. 553.

(3) See form of advertisement, No. 16, *post*, p. 445.

Mode of making claim.

A. accepted bills of a company upon a letter of guarantee, and took a mortgage on a ship to secure the debt. The company was wound up, and the official liquidator issued advertisements for creditors. A. paid the bills at maturity, and a notary public took the guarantee to the official liquidator, and it was protested. Held, the

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Time of proof.

21. The creditors need not attend upon the adjudication, nor prove their debts or claims, unless they are required to do so by notice from the official liquidator; but upon such notice being given, they are to come in and prove their debts or claims within a time to be therein specified.

List of claims.

22. The official liquidator shall investigate the debts and claims sent in to him, and ascertain, so far as he is able, which of such debts and claims are justly due from the company; and he shall make out and leave at the chambers of the judge, a list of all the debts and claims sent in to him, distinguishing which of the debts and claims, or parts of debts and claims so claimed, are, in his opinion, justly due and proper to be allowed without further evidence, and which of them, in his opinion, ought to be proved by the creditors; and he shall make and file, prior to the time appointed for adjudication, an affidavit, setting forth which of the debts and claims in his opinion are justly due and proper to be allowed without further evidence, and stating his belief that such debts and claims are justly due and proper to be allowed, and the reasons for such belief (1).

Adjudication of claims.

23. At the time appointed for adjudicating upon the debts and claims, or at any adjournment thereof, the judge may either allow the debts and claims upon the affidavit of the official liquidator, or may require the same, or any of them, to be proved by the claimants, and adjourn the adjudication thereon to a time to be then fixed; and the official liquidator shall give notice to the creditors whose debts or claims have been so allowed, of such allowance (2).

Notice for further proof.

24. The official liquidator shall give notice to the creditors whose debts or claims have not been allowed upon his affidavit, that they are required to come in and prove the same by a day to be therein named, being not less than four days after such notice, and to attend at a time to be therein named, being the time appointed by the advertisement, or by adjournment (as the case may be) for adjudicating upon such debts and claims (3).

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presentation by the notary was not a claim which entitled A. to prove without deducting the sum realised by his security. *Barned's Banking Co., e.p. Forwood*, 17 W. R. 981. See *e.p. Kellock*, *ante*, p. 272.

(1) See forms, Nos. 17, 18, *post*, pp. 445, 446.

(2) See form, No. 19, *post*, p. 446.

(3) See forms, Nos. 20, 21, *post*, p. 447.

Valuation of claims.

25. The value of such debts and claims as are made admissible to proof by the 158th section of the said act (1), shall, so far as is possible, be estimated according to the value thereof at the date of the order to wind up the company (2).

Interest.

26. Interest on such debts and claims as shall be allowed shall be computed, as to such of them as carry interest, after the rate they respectively carry; any creditor whose debt or claim so allowed does not carry interest shall be entitled to interest, after the rate of 4*l.* per centum per annum, from the date of the order to wind up the company, out of any assets which may remain after satisfying the costs of the winding-up, the debts and claims established, and the interest of such debts and claims as by law carry interest (3).

Costs.

27. Such creditors as come in and prove their debts or claims pursuant to notice from the official liquidator shall be allowed their costs of proof, in the same manner as in the case of debts proved in a cause.

Certificate.

28. The result of the adjudication upon debts and claims shall be stated in a certificate to be made by the chief clerk, and certificates as to any of such debts and claims may be made from time to time. All such certificates shall state whether the debts or claims are allowed or disallowed, and whether allowed as against any particular assets, or in any other qualified or special manner (4).

LIST OF CONTRIBUTORIES (5).

Making verification, form and variation of list.

29. The official liquidator shall, with all convenient speed after his appointment, or at such time as the judge shall direct, make out and leave at the chambers of the judge a list of the

(1) *Ante*, p. 269.

(2) The intent of Rule 25 is not to qualify C. A. 1862, s. 158, *ante*, p. 269, as that would be *ultra vires*, and therefore continuing damage cannot be settled at the date of the order. *Trent and Humber Ship Building Co., e.p. Cambrian Steam Packet Co.*, L. R., 4 Ch. 112; 38 L. J., Ch. 38; 17 W. R. 181.

(3) Rule 26 is *ultra vires*. *Hatfield Patent Cask Co.*, 2 N. R. 502; 9 Jur. 977; *Herefordshire Banking Co.*, L. R., 4 Eq. 250; 36 L. J., Ch. 806; *East of England Banking Co.*, L. R., 4 Ch. 14; 38 L. J., Ch. 128; overruling *S. C.*, L. R., 6 Eq. 368.

Under the Winding-up Act, 1848, interest was allowed on instalments of purchase-money payable at fixed dates. *State Fire Insurance Co., e.p. Times Co.*, 34 L. J., Ch. 58; 2 H. & M. 722.

(4) See forms, Nos. 22, 28, *post*, pp. 447, 452.

(5) See C. A. 1862, sects. 98, 99, *ante*, pp. 237, 239.

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contributories of the company; and such list shall be verified by the affidavit of the official liquidator, and shall, so far as is practicable, state the respective addresses of, and the number of shares or extent of interest to be attributed to each such contributory, and distinguish the several classes of contributories. And such list may from time to time, by leave of the judge, be varied or added to, by the official liquidator (1).

Notices and settlement of list.

30. Upon the list of contributories being left at the chambers of the judge, the official liquidator shall obtain an appointment for the judge to settle the same, and shall give notice in writing of such appointment to every person included in such list, and stating in what character, and for what number of shares or interest, such person is included in the list; and, in case any variation or addition to such list shall at any time be made by the official liquidator, a similar notice in writing shall be given to every person to whom such variation or addition applies. All such notices shall be served four clear days before the day appointed to settle such list, or such variation or addition (2).

Certificate.

31. The result of the settlement of the list of contributories shall be stated in a certificate by the chief clerk; and certificates may be made from time to time for the purpose of stating the result of such settlement down to any particular time, or as to any particular person, or stating any variation of the list (3).

SALES OF PROPERTY (4).

32. Any real or personal property belonging to the company may be sold with the approbation of the judge, in the same manner as in the case of a sale under a decree or order of the court in a suit, or, if the judge shall so direct, by the official liquidator; and upon any such sale by the official liquidator, the conditions or contracts of sale shall be settled and approved of by the judge, unless he shall otherwise direct; and the judge may, if he thinks fit, direct such conditions and contracts, and the abstract of the title to the property, to be submitted to one

(1) See forms, Nos. 24, 25, 29, 30, 32, *post*, pp. 450, 452, 453, 454.
(2) See forms, Nos. 26, 27, *post*, p. 451.
(3) See form, No. 31, *post*, p. 453.
(4) See C. A. 1862, sects. 94, 95, 103, *ante*, pp. 234, 242.

of the conveyancing counsel of the court, under the 2nd of the Consolidated General Orders (1), and may, on any sale by public auction, fix a reserved bidding; and, unless on account of the small amount of the purchase-monies or other cause, it shall, having regard to the amount of the security given by the official liquidator, be thought proper that the purchase-monies shall be paid to him, all conditions and contracts of sale shall provide that the purchase-monies shall be paid by the respective

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(1) The Order referred to is:—

"1. The business to be referred to the conveyancing counsel nominated by the lord chancellor, under the stat. 15 & 16 Vict. c. 80, s. 41, shall be distributed among such counsel in rotation by the first clerk to the registrars for the time being, and during his occasional or necessary absence by the second clerk to the registrars for the time being, and during the occasional or necessary absence of both such clerks, then by such one of the other clerks to the registrars as the senior registrar for the time being may nominate for that purpose. Business referred to conveyancing counsel, to be distributed in rotation.

"2. The clerk making such distribution shall be responsible for the business being distributed according to regular and just rotation, and in such manner as to keep secret from all persons the rota or succession of conveyancing counsel to whom such business may be referred; and it shall be his duty to keep a record of such references, with proper indexes, and to enter therein all such references, with the dates when the same are made. Duty of persons distributing.

"3. When the court or a judge at chambers directs any business to be referred to any such conveyancing counsel, a short memorandum or minute of such direction shall be prepared and signed, by the registrar if the same shall have been given in court, or by the judge's chief clerk, if given in chambers; and the party prosecuting such direction, or his solicitor, shall take such memorandum or minute to the registrar's clerk whose duty it is to make such distribution as aforesaid; and such clerk shall add at the foot thereof a note specifying the name of the conveyancing counsel in rotation to whom such business is to be referred; and such memorandum or minute shall be left by the party prosecuting such direction, or his solicitor, with such conveyancing counsel, and shall be a sufficient authority for him to proceed with the business so referred. Opinion, &c., of the conveyancing counsel, how obtained.

"4. In case the conveyancing counsel in rotation shall from illness or from any other cause be unable or decline to accept any such reference, the same shall be offered to the other conveyancing counsel appointed as aforesaid, successively, according to their seniority at the bar, until some one of them shall accept the same. Counsel in rotation unable or declining to act.

"5. The preceding rules of this order are not to interfere with the power of the court, or of the judge at chambers, to direct or transfer a reference to any one in particular of the said conveyancing counsel, where it appears to the court or the judge to be expedient. Liberty to direct or transfer reference to any one of such counsel in particular.

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purchasers into the Bank of England, to the account of the official liquidator of the company.

CALLS (1).

Summons to make call and notice.

33. Every application to the judge to make any call on the contributories or any of them, for any purpose authorized by the said act, shall be made by summons, stating the proposed amount of such call; and such summons shall be served, four clear days at the least before the day appointed for making the call, on every contributory proposed to be included in such call; or if the judge shall so direct, notice of such intended call may be given by advertisement (2).

Balance order.

34. When any order for a call has been made, a copy thereof shall be forthwith served upon each of the contributories included in such call, together with a notice from the official liquidator specifying the amount or balance due from such contributory (having regard to the provisions of the said act) in respect of such call; but such order need not be advertized unless, for any special reason, the judge shall so direct (3).

Enforcement of payment.

35. At the time of making an order for a call, the further proceedings relating thereto shall be adjourned to a time subsequent to the day appointed for the payment thereof, and afterwards from time to time so long as may be necessary; and at the time appointed by any such adjournment, or upon a summons to enforce payment of the call, duly served, and upon proof of the service of the order (4) and notice of the amount due, and nonpayment, an order may be made for such of the contributories who have made default, or of such of them against whom it shall be thought proper to make such order, to pay the sum which by such former order and notice they were respectively required to pay, or any less sum which may appear to be due from them respectively.

PAYMENT IN OF MONIES AND DEPOSIT OF SECURITIES (5).

Payment into bank.

36. If any official liquidator shall not pay all the monies received by him into the Bank of England, to the account of

(1) See C. A. 1862, sects. 102, 120, *ante*, pp. 241, 249.
(2) See forms, Nos. 33—35, *post*, pp. 455, 456.
(3) See forms, Nos. 36, 37, *post*, p. 456.
(4) See forms, Nos. 38, 39, 42, *post*, pp. 457, 459.
(5) See C. A. 1862, sects. 103, 104, *ante*, p. 242.

the official liquidator of the company, within seven days next after the receipt thereof, unless the judge shall have otherwise directed, such official liquidator shall be charged in his account with 10*s.* for every 100*l.*, and a proportionate sum for any larger amount, retained in his hands beyond such period, for every seven days during which the same shall have been so retained, and the judge may, for any such retention, disallow the salary or remuneration of such official liquidator.

Custody of securities.

37. All bills, notes and other securities payable to the company or the official liquidator thereof shall, as soon as they shall come to the hands of such official liquidator, be deposited by him in the Bank of England for the purpose of being presented by the bank for acceptance and payment, or for payment only, as the case may be.

Form of order for payment of money.

38. All orders for payment of calls, balances or other monies due from any contributory or other person shall direct the same to be paid into the Bank of England, to the account of the official liquidator of the company, unless, on account of the smallness of the amount or other cause, it shall, having regard to the amount of the security given by the official liquidator, be thought proper to direct payment thereof to the official liquidator. Provided that where any such order has been made directing payment of a specific sum into the Bank of England, in case it shall be thought proper for the purpose of enabling the official liquidator to issue execution or take other proceedings to enforce the payment thereof, or for any other reason, an order may, either before service of such former order or after the time thereby fixed for payment, be made, without notice, for payment of the same sum to the official liquidator.

Notice of mode of payment.

39. At the time of the service of any order for payment into the Bank of England, the official liquidator shall give to the party served a notice, to the purport or effect set forth in form No. 40 in the third schedule hereto, for the purpose of informing him how the payment is to be made; and before the time fixed for such payment the official liquidator shall furnish the cashier of the Bank of England with a certificate, to the purport or effect set forth in form No. 41 in the third schedule hereto, to be signed by such cashier, and delivered to the party paying in the money therein mentioned.

Evidence of non-payment.

40. For the purpose of enforcing any order for payment of

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money into the Bank of England an affidavit of the official liquidator, to the purport or effect set forth in form No. 43 in the third schedule hereto, shall be sufficient evidence of the nonpayment thereof.

Form of account.

41. All monies, bills, notes and other securities paid and delivered into the Bank of England shall be placed to the credit of the account of the official liquidator of the company; and orders for any such payment and delivery shall direct the same accordingly.

DELIVERY OUT OF SECURITIES, AND PAYMENT OUT AND INVESTMENT OF MONIES (1).

Cheques and orders for delivery of securities.

42. All bills, notes and other securities delivered into the Bank of England shall be delivered out upon a request signed by the official liquidator, and countersigned by the chief clerk of the judge; and monies placed to the account of the official liquidator shall be paid out upon cheques or orders, signed by the official liquidator, and countersigned by the chief clerk of the judge.

Interim investment.

43. All or any part of the money for the time being standing to the credit of the account of the official liquidator at the Bank of England, and not immediately required for the purposes of the winding-up, may be invested in the purchase of Bank £3 per Cent. Annuities, Reduced £3 per Cent. Annuities, New £3 per Cent. Annuities, or New £2 : 10*s.* per Cent. Annuities, in the name of the official liquidator, or in the purchase of exchequer bills. All such investments shall be made by the Bank of England, upon a request signed by the official liquidator, and countersigned by the chief clerk of the judge, and which request shall be a sufficient authority for debiting the account with the purchase-money, and such exchequer bills, and in case of an exchange thereof any new exchequer bills, shall be retained by or deposited with the Bank of England, in the name and on behalf of the official liquidator; and such annuities or exchequer bills shall not afterwards be sold or transferred or otherwise dealt with except upon a direction for that purpose signed by the official liqui-

(1) See C. A. 1862, sects. 103, 104, *ante*, p. 242.

dator, and countersigned by the chief clerk of the judge, or under an order to be made by the judge (1).

Dividends thereon.

44. All dividends and interest to accrue due upon any such annuities shall from time to time be received by the Bank of England, under a power of attorney to be executed by the official liquidator, and placed to the credit of the account of such official liquidator; and such of the exchequer bills as shall from time to time be in course of payment, shall be delivered by the Bank of England to one of their cashiers, who is to receive the interest due thereon, and exchange the same for new bills, in case such new bills are issued, or otherwise to receive the principal and interest due on such of the said bills, so in course of payment, as cannot be exchanged, and pay the said interest, or principal and interest, as the case may be, into the Bank of England to the credit of the account of the official liquidator of the company.

MEETINGS OF CREDITORS OR CONTRIBUTORIES.

Notice of meeting.

45. When the judge shall direct a meeting of the creditors or contributories of the company to be summoned under the 91st or 149th section (2) of the said act, the official liquidator shall give notice in writing, seven clear days before the day appointed for such meeting, to every creditor or contributory, of the time and place appointed for such meeting, and of the matter upon which the judge desires to ascertain the wishes of the creditors or contributories; or, if the judge shall so direct, such notice may be given by advertisement, in which case the object of the meeting need not be stated, and it shall not be necessary to insert such advertisement in the London Gazette.

Mode of voting.

46. The votes of the creditors or contributories of the company at any meeting summoned by the direction of the judge, may be given either personally or by proxy; but no creditor shall appoint a proxy who is not a creditor of the company whose debt or claim has been allowed, and no contributory shall appoint a proxy who is not a contributory of the company.

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(1) See form, No. 44, *post*, p. 460.
(2) *Ante*, pp. 231, 265.

Rule 47.

Memorandum of direction for meeting.

47. The direction of the judge for any meeting of creditors or contributories under the 91st or 149th section (1) of the said act, and the appointment of a person to act as chairman of any such meeting, shall be testified by a memorandum signed by the chief clerk of the judge.

DIRECTION OR SANCTION OF THE JUDGE.

Memorandum of sanction.

48. The sanction of the judge to the drawing, accepting, making and indorsing any bill of exchange or promissory note by any official liquidator shall be testified by a memorandum on such bill of exchange or promissory note, signed by the chief clerk of the judge.

Evidence on application for sanction.

49. Every application for the sanction of the judge to a compromise with any contributory or other person indebted to the company shall be supported by the affidavit of the official liquidator that he has investigated the affairs of such contributory or person, and stating his belief that the proposed compromise will be beneficial to the company, and his reasons for such belief; and the sanction of the judge thereto shall be testified by a memorandum, signed by the chief clerk of the judge, on the agreement of compromise, unless any party shall desire to appeal from the decision of the judge, in which case an order shall be drawn up for that purpose.

Mode of applying.

50. The direction or sanction of the judge for any other proceeding or act to be taken or done by the official liquidator shall be obtained upon summons, and an order shall be drawn up thereon, unless the judge shall otherwise direct.

APPLICATIONS TO THE COURT OR JUDGE UNDER SECTS. 137, 138, 141, 167 AND 168 OF THE ACT.

51. Every application under the 137th, 138th or 141st (2) section of the said act shall be made by petition or motion, or, if the judge shall so direct, by summons at chambers; and every application under the 167th or 168th section of the said act shall be made by petition (3).

ORDERS.

52. All order made in chambers shall be drawn up in chambers, unless specially directed to be drawn up by the registrar,

(1) *Ante*, pp. 231, 264.
(2) *Ante*, pp. 255, 260.
(3) *Ante*, p. 282.

and shall be entered in the same manner, and in the same office, as other orders made in chambers.

ADVERTISEMENTS.

53. When an advertisement is required for any purpose, except where otherwise directed by these rules, the advertisement shall be inserted once in the London Gazette, and in such other newspaper or newspapers, and for such number of times as may be directed. The judge may, in such cases as he shall think fit, dispense with any advertisement required by these rules.

ADMISSION OF DOCUMENTS.

54. Any party to any proceeding in court or chambers relating to the winding-up of a company may, by notice in writing in the form No. 6, in schedule (N.) to the Consolidated General Orders, or to the like effect, call on any other party thereto competent to admit the same, to admit any document, saving all just exceptions; and in case of refusal or neglect so to admit, the costs of proving such document shall be paid by the party so refusing or neglecting, unless the judge shall be of opinion that the refusal to admit was reasonable; and no costs of proving any document shall be allowed unless such notice shall have been given, except in cases where the omission to give such notice has been, in the opinion of the taxing master, a saving of expense.

AFFIDAVITS (1).

55. Where an order shall have been made for the winding-up of any company, any person intending to use any affidavit in any proceeding under such order, shall file the same in the Record and Writ Clerks' Office, and give notice thereof to the official liquidator. The person, other than the official liquidator, filing the affidavit shall not be required to take an office copy thereof, but an office copy thereof shall be taken by the official liquidator, and he shall produce the same at the hearing of any application or proceeding upon which it is intended to be used, unless the judge shall otherwise direct.

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(1) See Rule 74, *post*, p. 432.

Rule 56.

CERTIFICATE OF CHIEF CLERK.

56. The 48th, 49th, 50th, 51st, 52nd and 55th rules of the 35th of the Consolidated General Orders (1), shall apply to all certificates of the chief clerk in the matter of the winding-up of any company; nevertheless, certificate on passing the official liquidator's accounts may be approved and signed by the judge without delay, and upon being so signed shall be filed and forthwith acted upon.

REGISTER AND FILE OF PROCEEDINGS.

57. A register shall be kept of all proceedings in the judge's

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(1) These Rules are as follow:—

Form of chief clerk's certificate.

"48. The certificate of the chief clerk to the judge may be in a form similar to the form set forth in schedule (M.), with such variations as the circumstances of the case may require; and, when prepared and settled, it shall be transcribed by the solicitor prosecuting the proceedings, in such form and within such time as the chief clerk shall require, and shall then be signed by the chief clerk at an adjournment to be made for that purpose. But where, from the nature of the case, the certificate can be drawn and copied in chambers whilst the parties are present before the chief clerk, the same shall be then completed and signed by him without any adjournment.

Transcript.

Time for taking opinion of judge before certificate signed by him.

"49. The time within which any party is to be at liberty to take the opinion of the judge upon any proceeding which shall have been concluded, but as to which the certificate of the chief clerk shall not have been signed and adopted by the judge, shall be four clear days after the certificate shall have been signed by the chief clerk.

Summons for taking opinion of judge.

"50. Any party desiring to take the opinion of the judge, as mentioned in the last preceding rule, shall, within four clear days after the certificate shall have been signed by the chief clerk, obtain a summons for such purpose.

Time for signature of certificate by judge.

"51. At the expiration of four clear days after the certificate shall have been signed by the chief clerk, if no party has in the meantime obtained a summons to take the opinion of the judge thereon, the chief clerk shall submit the certificate to the judge for his approval, and the judge may thereupon, if he approve the same, sign such certificate in testimony of his adoption thereof, as follows:—"Approved, this day of ."

Time for applying to discharge or vary certificate signed.

"52. The time within which an application may be made, by summons or motion, to discharge or vary any certificate which has been signed and adopted by the judge in chambers, shall be eight clear days after the filing of such certificate."

Filing of certificate and accounts.

"55. The certificate when signed by the judge, with the accounts, if any, to be filed therewith, shall be transmitted by the chief clerk to the Report Office, to be there filed."

chambers, in each matter, in the same manner as required by the 57th rule of the 35th of the Consolidated General Orders (1), and no documents or proceedings are to be filed in the judge's chambers, unless the judge shall otherwise direct.

58. All orders, exhibits, admissions, memorandums and office copies of affidavits, examinations, depositions and certificates, and all other documents relating to the winding-up of any company, shall be filed by the official liquidator, as far as may be, in one continuous file, and such file shall be kept by him, or otherwise, as the judge may from time to time direct. Every contributory of the company, and every creditor thereof whose debt or claim has been allowed, shall be entitled, at all reasonable times, to inspect such file free of charge, and, at his own expense, to take copies or extracts from any of the documents comprised therein, or to be furnished with such copies or extracts at a rate not exceeding three-halfpence per folio of seventy-two words; and such file shall be produced in court, or before the judge, and otherwise, as occasion may require.

PROVISIONAL OFFICIAL LIQUIDATORS.

59. All the above rules relating to official liquidators shall, so far as the same are applicable, and subject to the directions of the judge in each case, apply to provisional official liquidators (2).

ATTENDANCE AND APPEARANCE OF PARTIES (3).

60. Every person, for the time being, on the list of contributories of the company, left at the chambers of the judge by the official liquidator, and every person having a debt or claim against the company, allowed by the judge, shall be at liberty, at his own expense, to attend the proceedings before the judge, and shall be entitled, upon payment of the costs occasioned

Costs.

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(1) "57. A register shall be kept of all proceedings in the judge's chambers, with proper dates, so that all the proceedings in each cause or matter may appear consecutively and in chronological order, with a short statement of the questions or points decided or ruled at every hearing." Register of proceedings in chambers.

(2) See Rule 15, *ante*, p. 418.

(3) See C. A. 1862, sects. 74, 159, 160, *ante*, pp. 216, 274, 275.

Rule 60.

thereby, to have notice of all such proceedings as he shall by written request desire to have notice of; but if the judge shall be of opinion that the attendance of any such person upon any proceeding has occasioned any additional costs which ought not to be borne by the funds of the company, he may direct such costs, or a gross sum in lieu thereof, to be paid by such person; and such person shall not be entitled to attend any further proceedings until he has paid the same (1).

Representatives.

61. The judge may from time to time appoint any one or more of the contributories or creditors, as he thinks fit, to represent before him, at the expense of the company, all or any class of the contributories or creditors, upon any question as to a compromise with any of the contributories or creditors, or in and about any other proceedings before him relating to the winding-up of the company, and may remove the person or persons so appointed. In case more than one person shall be so appointed, they shall unite in employing the same solicitor to represent them.

Address book.

62. No contributory or creditor shall be entitled to attend any proceedings at the chambers of the judge, unless and until he has entered in a book to be kept there for that purpose his name and address, and the name and address of his solicitor (if any), and upon any change of his address or of his solicitor, his new address, and the name and address of his new solicitor (2).

SERVICES OF SUMMONSES, NOTICES, &c. (3).

Service by post.

63. Services upon contributories and creditors shall be effected (except when personal service is required) by sending the notice, or a copy of the summons or order or other pro-

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(1) The Winding-up Act, 1848, s. 38, contained a provision similar to Rule 60. Contributories had a right to be present at the attendance before the master, to fix a reserved bidding on a sale of property of the company. *Imperial Salt and Alkali Co., e.p. Slatter's Executors*, 21 L. J., Ch. 241; 1 D. M. & G. 64.

Solicitor's lien.

Where the solicitor in the winding-up had been changed, the old solicitor was not allowed a lien on the file of proceedings for his costs. *Union Cement, &c. Co., e.p. Pulbrook*, 17 W. R. 949.

(2) See form, No. 53, *post*, p. 464.

(3) See C. A. 1862, sects. 62, 63, *ante*, pp. 207, 208; Rule 74, *post*, p. 436.

ceeding, through the post in a pre-paid letter (1), addressed to the solicitor of the party to be served (if any) or otherwise to the party himself at the address entered or last entered pursuant to the preceding rule; or if no such entry has been made, then, if a contributory, to his last known address or place of abode; and if a creditor, to the address given by him, pursuant to the foregoing rule 20; and such notice, or copy summons, order or other proceeding shall be considered as served at the time the same ought to be delivered in the due course of delivery by the post-office, and notwithstanding the same may be returned by the post-office.

Informalities.

64. No service under these rules shall be deemed invalid by reason that the christian name, or any of the christian names of the person on whom service is sought to be made, has been omitted, or designated by initial letters, in the list of contributories, or in the summons, order, notice or other document wherein the name of such contributory or creditor is contained, provided the judge is satisfied that such service is in other respects sufficient.

TERMINATION OF WINDING-UP (2).

Balance sheet.

65. Upon the termination of the proceedings in chambers for the winding-up of any company, a balance sheet shall be brought in by the official liquidator of his receipts and payments, and verified by his affidavit; and the official liquidator shall pass his final account, and the balance (if any) due thereon shall be certified. And upon payment of such balance, in such manner as the court or judge shall direct, the recognizance entered into by the official liquidator and his sureties may be vacated.

Certificate.

66. When the official liquidator has passed his final account, and the balance (if any) certified to be due thereon has been

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(1) Service of notice by post is good, though the letter may not have reached its destination. *Warwick and Worcester R. Co., e.p. De Beauvoir*, 32 L. J., Ch. 453.

Service of notice of the intention to make a call may be made through the post upon a contributory out of the jurisdiction, inasmuch as the validity of that mode of service can be disputed on the proceedings to enforce the call. *General International Agency Co.*, 17 W. R. 973.

(2) See C. A. 1862, sects. 111, 112, *ante*, p. 244.

Rule 66.

paid in such manner as the judge shall direct, a certificate shall be made by the chief clerk, that the affairs of the company have been completely wound up (1), and in case the company has not been already dissolved, the official liquidator shall, immediately after such certificate has become binding, apply to the judge for an order that the company be dissolved from the date of such order (2).

Custody of proceedings.

67. When the proceedings for winding-up any company have been completed, the file of proceedings, and the book containing the official liquidator's account, shall be deposited in the Record and Writ Clerks' Office.

DUTIES OF SOLICITOR OF OFFICIAL LIQUIDATOR (3).

68. The solicitor of the official liquidator shall conduct all such proceedings as are ordinarily conducted by solicitors of the court; and where the attendance of his solicitor is required on any proceeding in court or chambers, the official liquidator need not attend in person, except in cases where his presence is necessary in addition to that of his solicitor, or the judge shall direct him to attend.

FORMS.

69. The forms set forth or referred to in the third schedule to these orders, with such variations as the circumstances of each case may require, may be used for the respective purposes mentioned in such schedule.

FEES.

70. Solicitors shall be entitled to charge, and be allowed the fees set forth and referred to in the first schedule hereto, unless the court or judge shall otherwise specially direct.

71. The fees of court set forth and referred to in the second schedule hereto shall be paid in relation to proceedings in the Court of Chancery under the Companies Act, 1862, and shall

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(1) See form, No. 55, *post*, p. 465.
(2) See form, No. 53, *post*, p. 464.
(3) See C. A. 1862, sect. 97, *ante*, p. 237; form, No. 12, *post*, 443.

be collected by means of stamps, in the manner prescribed by the 39th of the Consolidated General Orders (1).

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(1) The rules of the order referred to as applicable are:—

"3. The fees of court (save as provided by the 8th Rule of this Order) shall be collected, not in money, but by means of stamps, denoting the amount of such fees, to be provided and used as by the stat. 15 & 16 Vict. c. 87, is directed. And the stamps for denoting the amount of such fees shall be of the amounts set forth in the Regulations as to Court Fees subjoined to these orders, and in such other regulations as may from time to time be duly made in that behalf. Fees to be collected by stamps. Amounts.

"4. The Commissioners of Inland Revenue shall from time to time give the necessary directions for carrying this order into effect, as is provided by the said last-mentioned act. And the said commissioners shall once in every month cause to be paid into the bank, to the credit of the Accountant-General, to the account there intituled 'The Suitors' Fee Fund Account,' such sums of money as may have been received by them for the stamps hereinbefore mentioned, after deducting the costs, charges and expenses incurred by them or by their direction in carrying this order into effect, and all sums of money repaid on allowance for spoiled stamps; and notice of each such payment shall, at the time of making the same, be given by the said commissioners to the Accountant-General, who shall certify the amount of such payment to the court. Inland revenue commissioners to give directions for carrying order into effect.

"5. Such stamps shall be stamped or affixed, at the expense of the parties liable to pay the fees, on or to the vellum, parchment or paper on which the proceedings in respect whereof such fees are payable are written or printed, or which may be otherwise used in reference to such proceedings. And where any of such fees are payable in respect of any matter or thing to be done by any officer or in any office of the court, and it has not been customary to use, in reference to such matter or thing, any written or printed document or paper whereon the stamp could be stamped or affixed, the party or his solicitor requiring such matter or thing to be so done, shall make application for the same by a short note, or memorandum in writing, and a stamp denoting the amount of the fee so payable shall be stamped on or affixed to such note or memorandum. Stamps how used.

"6. Every officer of the Court of Chancery (other than a solicitor, as such) who shall receive any document to which a stamp shall be affixed, pursuant to the provisions of this order, shall, immediately upon the receipt of such document, cancel or deface the stamp thereon, by writing upon such stamp his name or the initial letters of his name, in such a manner as to show clearly and distinctly that such stamp has been made use of, and so that the same may not be again used; and no such document shall be filed or delivered out until the stamp thereon shall have been cancelled or defaced in manner aforesaid. How defaced.

"7. Where stamps impressed upon adhesive paper are used, the stamp affixed to the document shall be of an amount corresponding as nearly as is practicable with the amount of the stamp which such document requires, in order that no greater number of adhesive stamps may be affixed to any document than is actually necessary." Number of stamps.

Rule 72.

TAXATION OF COSTS.

72. Where an order is made in court or chambers for payment of any costs, the order shall direct the taxation thereof by the taxing master; except in cases where a gross sum in lieu of taxed costs is fixed by the order, in accordance with the 37th rule of the 40th of the Consolidated General Orders (1).

POWER OF JUDGE (2).

73. The power of the court, and of the judge sitting in chambers, to enlarge or abridge the time for doing any act, or taking any proceeding, to adjourn or review any proceeding, and to give any direction as to the course of proceeding, is unaffected by these rules.

GENERAL DIRECTIONS (3).

74. The general practice of the court, including the course of proceeding and practice at the judges' chambers, as provided by the statute 15 & 16 Vict. c. 80, and the general orders of the court relative thereto, shall, in cases not provided for by the Companies Act, 1862, or these rules, and so far as the same are applicable and not inconsistent with the said act, or these rules, apply to all proceedings for winding-up a company.

APPLICATION OF RULES.

75. These rules apply only to proceedings under the Companies Act, 1862.

COMMENCEMENT OF RULES.

76. These rules shall take effect and come into operation on and after the 25th day of November, 1862.

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(1) The rule referred to is :—

Gross sum in lieu of taxed costs.

"37. Upon interlocutory applications, where the court deems it proper to award costs to either party, the court may by the order direct payment of a sum in gross in lieu of taxed costs, and direct by and to whom such sum in gross shall be paid (8th May, 1845; Ord. 123)."

Wood, V. C., said, he never exercised the power except in poor cases, where the parties were anxions to end the matter. *London and Blackwall R. Co.* v. *Board of Works for Limehouse District*, 26 L. J., Ch. 170.

(2) See C. A. 1862, sects. 83, 119, 204, *ante*, pp. 224, 280, 303.

(3) See C. A. 1862, sect. 170, *ante*, 283.

INTERPRETATION.

77. The 1st rule of the 23rd of the Consolidated General Orders, and the general interpretation clause therein, shall be deemed to extend and apply to the rules of this order; and such rules shall have the effect of, and be deemed to be general orders of the court (1).

WESTBURY, C.
JOHN ROMILLY, M. R.
RICHD. T. KINDERSLEY, V.-C.
JOHN STUART, V.-C.
W. P. WOOD, V.-C.

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(1) E. g., when under the voluntary winding-up of a company one proceeding has been taken in one branch of the court, all other proceedings ought to be taken in the same branch. *Alexandra Printing Ink Co.*, 16 W. R. 456.

The rule is as follows:—

"1. In any decree or order where the words 'the judge' are used, such expression shall mean the judge to whose court the cause or matter wherein such decree or order is made is for the time being attached. Where the words 'the taxing master' are used, such expression shall mean the taxing master in rotation, or, in case any previous reference shall have been made, the taxing master to whom the cause or matter stands referred, as the case may be; and where the words 'the clerk of records and writs' are used, such expression shall mean the clerk of records and writs in whose division the cause or matter wherein such order is made is."

Meaning of the words "the judge," "the taxing master," "the clerk of records and writs," in a decree or order.

THE FIRST SCHEDULE.

FEES AND CHARGES TO BE ALLOWED TO SOLICITORS.

	£	s.	d.
For preparing and drawing up every order made at chambers, and attending for same, and at the registrar's office to get same entered	0	13	4
For ingrossing every order, in addition to the above fee, per folio	0	0	4

For other duties performed, such of the fees on the higher scale authorized by the 2nd Rule of the 38th of the Consolidated General Orders, and the regulations as to solicitors' fees subjoined thereto, as are applicable; except that the special fee allowed on creditors' claims is not to apply.

Where under such regulations a fee of 3 guineas may be allowed for attending any summons or other appointment at the judge's chambers, the same may be increased to any sum not exceeding 5 guineas.

The fee of 2*s.* 6*d.* allowed by such regulations for notices and services shall be reduced to 1*s.* 6*d.*, where the service may be effected as provided by the above Rule 63.

The usual charges relating to printing shall be allowed in lieu of copies for service where the fee for copies would exceed the charges for printing, and amount to more than 3*l.*

THE SECOND SCHEDULE

FEES TO BE COLLECTED BY MEANS OF STAMPS.

In the Judges' Chambers.	£	s.	d.
For every summons	0	3	0
For every order drawn up by the chief clerk	0	5	0
For every advertisement	1	0	0
For every certificate	0	5	0
For every oath, affirmation, declaration or attestation upon honour	0	1	6
In the Registrars' Office.			
For every order made in court	1	0	0
For every order made in chambers	0	5	0
For every office copy of an order	0	5	0

In the Examiners' Office. £ s. d.

The same fees as those directed to be paid and collected in such office by the 2nd Rule of the 39th of the Consolidated General Orders and the Regulations subjoined thereto.

In the Record and Writ Clerks' Office and Report Office.

Such of the fees directed to be paid and collected in such office by the 2nd Rule of the 39th of the Consolidated General Orders and the Regulations subjoined thereto as are applicable.

In the Taxing Masters' Office.

The same fees as those directed to be paid and collected by the 2nd Rule of the 39th of the Consolidated General Orders and the Regulations subjoined thereto.

In the Office of the Lord Chancellor's Principal Secretary.

For every petition 1 0 0

In the Office of the Secretary at the Rolls.

For every petition 1 0 0

THE THIRD SCHEDULE.

FORMS.

No. 1. Advertisement of Petition. [Rule 2, *ante*, p. 415.]

In the matter of the Companies Act, 1862; and of the ——— company.

Notice is hereby given, that a petition for the winding-up of the above-named company by the court [*or* subject to the supervision of the court] of Chancery was, on the day of 18 , presented to the Lord Chancellor [*or* the Master of the Rolls] by the said company [*or* by A. B. of a creditor *or* contributory] of the said company [*or as the case may be*]. And that the said petition is directed to be heard before the Vice-Chancellor [*or* Master of the Rolls] on the day of 18 ; and any creditor or contributory of the said company desirous to oppose the making of an order for the winding-up of the said company under the above act should appear at the time of hearing by himself or his counsel for that purpose ; and a copy of the petition will be furnished to any creditor or contributory of the said company requiring the same, by the undersigned, on payment of the regulated charge for the same.

C. and D., of &c. [agents for E. and F., of &c.]
solicitors for the petitioner.

No. 2. Affidavit verifying Petition. [Rule 4, *ante*, p. 415.]

In chancery.

In the matter, &c.

I, A. B., of &c., make oath and say, that such of the statements in the petition now produced and shown to me, and marked with the letter A, as relate to my own acts and deeds are true, and such of the said statements as relate to the acts and deeds of any other person or persons I believe to be true.

Sworn, &c.

No. 3. Order for Winding-up by the Court. [25 & 26 Vict. c. 89, ss. 81, 82, *ante*, pp. 221, 223.]

The Master of the Rolls [*or* Vice-Chancellor]. } day, the day of , 18 . In the matter, &c.

Upon the petition of the above-named company [*or* A. B., of &c., a creditor (*or* contributory) of the above-named company] on the day of 18 , preferred unto the Right Honorable the Lord High Chancellor of Great Britain [*or* Master of the Rolls], and upon hearing counsel for the petitioner, and for and upon reading the said petition, an affidavit of [the said petitioner] filed, &c., verifying the said petition, an affidavit of L. M., filed the day of 18 , the "London Gazette" of the day of , the "Times" newspaper of the day of [*enter any other papers*], each containing an advertisement of the said petition [*enter any other evidence*], his honor [*or* this court] doth order that the said company be wound up by this court, under the provisions of the Companies Act, 1862.

No. 4. Order for Winding-up, subject to Supervision. [25 & 26 Vict. c. 89, ss. 147, 148, *ante*, p. 264.]

The Master of the Rolls [*or* Vice-Chancellor]. } day, the day of , 18 . In the matter, &c.

Upon the petition, &c., his honor [*or* this court] doth order, that the voluntary winding-up of the said company be continued, but subject to the supervision of this court; and any of the proceedings under the said voluntary winding-up may be adopted as the judge shall think fit. And the creditors, contributories and liquidators of the said company, and all other persons interested, are to be at liberty to apply to the judge at chambers as there may be occasion.

No. 5. Advertisement of Order to Wind up. [Rule 6, *ante*, p. 416.]

In the matter, &c.

By an order made by the Master of the Rolls [*or* the Vice-Chancellor] in the above matter, dated the day of 18 , on the

petition of the above-named company [*or* A. B., of], it was ordered that, &c. [*as in order*].

C. and D., of &c.,
Solicitors for the said petitioner.

No. 6. Advertisement of Time and Place fixed for the Appointment of Official Liquidator. [Rule 9, *ante*, p. 417.]

In the matter, &c.

Notice is hereby given, that the Master of the Rolls [*or* the Vice-Chancellor] has fixed the day of 18 , at o'clock in the noon, at his chambers in the Rolls Yard, Chancery Lane [*or* at No. Lincoln's Inn], in the county of Middlesex, as the time and place for the appointment of an official liquidator of the above-named company.

G. H.,
Chief Clerk.

No. 7. Proposal for Appointment of Official Liquidator (and Sureties) where Form No. 6 has been issued.

In the matter, &c.

We, the undersigned contributories of the above-named company for the number of shares placed opposite our respective names, hereby propose Mr. W. T., of &c., public accountant, to be the official liquidator of the said company [and H. N., of &c., and J. P., of &c., to be his sureties].

Name.	Address.	Number of Shares held.

No. 8. Order appointing an Official Liquidator. [Rules 10, 11, *ante*, p. 417.]

Master of the Rolls [*or* Vice-Chancellor] at Chambers. } , the day of , 18 .
In the matter, &c.

Upon the application, &c., and upon reading, &c., the judge doth hereby appoint R. P. H., of &c., official liquidator of the above-named company. [*If security has not been given, add*, And it is ordered that the said R. P. H. do, on or before the day of next, give security to be approved of by the judge.] And it is ordered that the said R. P. H. do, on the day of , and day of 18 , and the same days in each succeeding year, leave his accounts at the chambers of the said judge. And it is ordered, that all monies to be received by the said R. P. H. be paid by him into the Bank of England, to the credit of the

account of the official liquidator of the said company, within seven days after the receipt thereof. [*In case two or more official liquidators are appointed add*, And the said judge doth declare that the following acts, required or authorized by the above statute to be done by the official liquidator, may be done by either (*or* any one *or* two) of the official liquidators hereby appointed; that is to say, (*describe the acts*); and that all other acts so required or authorized to be done be done by both (*or* all) the official liquidators hereby appointed.]

No. 9. Order appointing a Provisional Official Liquidator. [Rules 10, 11, 15, 59, *ante*, pp. 417, 418, 431.]

Master of the Rolls [*or* Vice-Chancellor] at Chambers. } , the day of , 18 . In the matter, &c.

Upon the application, &c., and upon reading, &c., the judge doth hereby appoint R. P. H., of &c., provisionally, official liquidator of the above-named company [*if security dispensed with add*, without security; *or if security is to be given, add directions as to security, accounts and payment into the bank, as in Form No.* 8]. And the said judge doth hereby limit and restrict the powers of the said R. P. H., as such provisional official liquidator, to the following acts; that is to say, [*describe the acts which the provisional official liquidator is to be authorized to do*].

No. 10. Recognizance of the Official Liquidator and Sureties. [Rule 10, *ante*, p. 417.]

18 . In the matter, &c. The Master of the Rolls [*or* Vice-Chancellor] has approved of and allowed this recognizance. G. H., Chief Clerk.

R. P. H., of &c., W. B., of &c. and T. P., of &c., before our sovereign lady the Queen in her High Court of Chancery personally appearing, do acknowledge themselves, and every of them doth acknowledge himself, to owe to the Right Honorable Sir John Romilly, knight, the Master of the Rolls, and the Honorable Sir Richard Torin Kindersley, knight, the senior Vice-Chancellor of the said court, the respective sums of lawful money of Great Britain set opposite to their respective names in the schedule hereto, to be paid to the said Sir John Romilly and Sir Richard Torin Kindersley, or one of them, or the executors or administrators of them, or one of them; and in default of payment of the said sums, the said R. P. H., W. B. and T. P. are willing and do agree, and every of them is willing and doth agree for himself, his heirs, executors and administrators, by these presents, that the said sums shall be levied, recovered and received of and from them and every of them, and of and from all and singular the manors, messuages, lands, tenements and hereditaments, goods and chattels of them and every of them, wheresoever the same shall be found. Witness our Sovereign Lady Victoria, by the grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith, and so forth, at Westminster, the day of 18 .

Whereas, in the matter of &c. [*take title from order to wind up*] the Master of the Rolls [*or* Vice-Chancellor] has by an order dated the day of 18 , appointed the said R. P. H. official liquidator of the said company, and has thereby directed him to give security, to be

approved of by the said judge [*or, in case the security precedes the order appointing*, has approved of the said R. P. H. as a proper person to be appointed official liquidator of the said company, upon his giving security]. And whereas the said judge has approved of the said W. B. and T. P. to be sureties for the said R. P. H. in the amounts set opposite to their respective names in the schedule herein, and has also approved of the above-written recognizance, with the under-written condition as a proper security to be entered into by the said R. P. H., W. B. and T. P. pursuant to the said order and [*or* pursuant to] the general order of the said court in that behalf; and in testimony of such approbation the chief clerk of the said judge hath signed an allowance in the margin hereof. Now the condition of the above-written recognizance is such, that if the said R. P. H., his executors or administrators, or any of them, do and shall duly account for what the said R. P. H. shall receive or become liable to pay, as official liquidator of the said company, at such periods and in such manner as the said judge shall appoint, and pay the same as the said judge hath [by the said order] directed, or shall hereafter direct, then the above recognizance to be void, otherwise to remain in full force and virtue.

THE SCHEDULE ABOVE REFERRED TO.

R. P. H. .. .. .. ———— Thousand pounds.
W. B. .. .. .. ———— Thousand pounds.
T. P. .. .. .. ———— Thousand pounds.

Taken and acknowledged by the above-named R. P. H., &c. &c.

No. 11. Affidavit of Sureties. [Rule 10, *ante*, p. 417.]

In Chancery.

In the matter, &c.

We, W. B., of &c., and T. P. of &c., severally make oath and say as follows:—

1. I, the said W. B., for myself, say that I am worth the sum of £ of lawful money of Great Britain, over and above what is sufficient for the payment of all my just debts and liabilities.

2. And I, the said T. P., for myself, say that I am worth the sum of £ of &c. [*as above*].

Sworn, &c.

No. 12. Sanction of Appointment of Solicitor to Official Liquidator and Appointment. [25 & 26 Vict. c. 89, s. 97, *ante*, p. 234.]

In the matter, &c.

The Master of the Rolls [*or* Vice-Chancellor] sanctions the official liquidator appointing a solicitor, to assist him in the performance of his duties.

G. H., Chief Clerk.

I hereby appoint Messrs. C. and D. of &c., to be my solicitors in this matter.

Dated this day of 18 .

R. P. H., official liquidator.

No. 13. Order for Payment of Money or Delivery of Books, &c., to Official Liquidator. [25 & 26 Vict. c. 89, ss. 100, 101, *ante*, pp. 439, 440.]

The Master of the Rolls [*or* Vice-Chancellor] at Chambers. } day, the day of 18 . In the matter, &c.

Upon the application of, &c., and on reading, &c., it is ordered, that A. B., of &c., do, within four days after service hereof, pay to [*or* deliver, convey, surrender or transfer to or into the hands of] R. P. H., the official liquidator of the said company, at the office of the said R. P. H., situate at, &c., the sum of £ being the amount of debt appearing to be due from the said A. B. on his account with the said company [*or* any sum or balance, books, papers, estates or effects], [*or specifically describe the property*] now being in the hands of the said A. B., and to which the said company is *primâ facie* entitled [*or otherwise, as the case may be*].

No. 14. Directions to open Account at the Bank of England. [Rules 11, 32, 36—44, *ante*, pp. 417, 422, 424.]

The Master of the Rolls [*or* Vice-Chancellor] at Chambers. } day of , 18 . In the matter, &c.

To the Governor and Company of the Bank of England.

Gentlemen,

An order, dated the day of 18 , having been made in the above matter by the Master of the Rolls [*or* the Vice-Chancellor] for winding-up the above-named company by the Court of Chancery, under the provisions of the said act, and R. P. H., of having by order dated the day of 18 , been appointed the official liquidator of the said company, you are requested to open an account, to be entitled "The Account of the Official Liquidator of the Company," in your books, pursuant to the said act.

All cheques drawn upon such account must be signed by the official liquidator, whose signature is attached hereto, and countersigned by one of the chief clerks of the said judge, whose signatures are also attached hereto.

I am, Gentlemen,
Your most obedient servant,
G. H., Chief Clerk.

Signatures.

R. P. H., Official Liquidator.
G. W. } Chief Clerks of the Master of the Rolls [*or*
G. H. } Vice-Chancellor].

No. 15. Advertisement of Appointment of Official Liquidator. [Rule 14, *ante*, p. 418.]

In the matter, &c.

The Master of the Rolls [*or* the Vice-Chancellor] has, by an order dated the day of 18 , appointed R. P. H. of to be official liquidator of the above-named company.

Dated this day of 18 .

G. H., Chief Clerk.

No. 16. Advertisement for Creditors. [Rule 20, *ante*, p. 419.]

In the matter, &c.

The creditors of the above-named company are required, on or before the day of 18 , to send their names and addresses, and the particulars of their debts or claims, and the names and addresses of their solicitors, if any, to R. P. H., of the official liquidator of the said company, and, if so required by notice in writing from the said official liquidator, are by their solicitors to come in and prove their said debts or claims, at the chambers of the Master of the Rolls [*or* the Vice-Chancellor], in the Rolls Yard, Chancery Lane [*or* at No. Lincoln's Inn], in the county of Middlesex, at such time as shall be specified in such notice, or in default thereof they will be excluded from the benefit of any distribution made before such debts are proved.

day, the day of 18 , at o'clock in the noon, at the said chambers, is appointed for hearing and adjudicating upon the debts and claims.

Dated this day of 18 .

G. H., Chief Clerk.

No. 17. Affidavit of Official Liquidator as to Debts and Claims. [Rule 22, *ante*, p. 420.]

In Chancery.

In the matter, &c.

I, R. P. H., of &c., the official liquidator of the above-named company, make oath and say as follows:—

1. I have, in the paper writing now produced and shown to me, and marked with the letter A, set forth a list of all the debts and claims the particulars of which have been sent in to me by persons making claims upon, or claiming to be creditors of the said company, pursuant to the advertisement issued in that behalf, dated the day of 18 ; and the names and addresses of the persons by whom such claims are made.

2. I have investigated the said debts and claims, and examined the same with the books and documents of the said company, in order to ascertain, so far as I am able, which of such debts and claims are justly due from the said company; and I have, in the first part of the said list, set forth such of the said debts and claims, or parts thereof, as, in my opinion, are justly due from the said company, and proper to be allowed without further evidence; and I have, in the sixth column of the said first part of the said list, set forth the amounts proper to be allowed in respect of such debts and claims; and I believe that such amounts respectively are justly due and proper to be allowed; and I have, in the seventh column of the said first part of the said list, stated my reasons for such belief.

3. I have, in the second part of the said list, set forth such of the said debts and claims as in my opinion ought to be proved by the respective creditors.

Sworn, &c.

No. 18. Exhibit referred to in Affidavit No. 17, *ante*, p. 418.

A.

In the matter, &c.

List of debts and claims of which the particulars have been sent in to the official liquidator.

This paper writing, marked A, was produced and shown to R. P. H., and is the same as is referred to in his affidavit, sworn before me this day of 18 .

W. B., &c.

First Part.—Debts and Claims proper to be allowed without further Evidence.

Serial No.	Names of Creditors.	Addresses and Descriptions.	Particulars of Debt or Claim.	Amount Claimed.	Amount proper to be allowed.	Reasons for belief that Amounts are proper to be allowed.
				£ *s. d.*	£ *s. d.*	

Second Part.—Debts and Claims which ought to be proved by the Creditors.

Serial No.	Names of Creditors.	Addresses and Descriptions.	Particulars of Debt or Claim.	Amount Claimed.
				£ *s. d.*

No. 19. Notice to Creditor of Allowance of Debt. [Rule 23, *ante*, p. 420.]

In the matter, &c. [*Place and date.*]

Sir,

The debt claimed by you in this matter has been allowed by the judge at the sum of £ . [*If part only allowed add*, If you claim to have a larger sum allowed, you are hereby required to come in and prove the further amount claimed, *&c., as in next Form.*]

I am, &c.

R. P. H., official liquidator.

To Mr. P. R.

No. 20. Notice to Creditors to come in and prove their Debts. [Rule 24, *ante*, p. 420.]

In the matter, &c.

You are hereby required to come in and prove the debt claimed by you against the above-named company, by filing your affidavit, and giving notice thereof to me, on or before the day of next, and you are to attend by your solicitor at the chambers of the Master of the Rolls, in the Rolls Yard, Chancery Lane [*or* of the Vice-Chancellor , at No. , Lincoln's Inn], in the county of Middlesex, on the day of 18 , at o'clock in the noon, being the time appointed for hearing and adjudicating upon the claim.

Dated this day of 18 .

R. P. H., official liquidator.

To Mr. S. T.

No. 21. Affidavit of Creditor, in Proof of Debt. [Rule 24, *ante*, p. 420.]

In Chancery.

In the matter, &c.

I, S. T., of &c., make oath and say as follows:—

1. The above-named company was, on the day of 18 , the date of the order for winding-up the same, and still is justly and truly indebted to me in the sum of £ for &c. [*describe shortly the nature of the debt, and exhibit any security for it; and in the case of a trade debt exhibit a bill of parcels, and verify the reasonableness of the charges as in proving a debt in a suit.*]

2. I have not, nor hath, nor have any person or persons by my order, or to my knowledge or belief, for my use received the said sum of £ or any part thereof, or any security or satisfaction for the same or any part thereof, [*if any security add*, except the said (*describe the security*) hereinbefore mentioned or referred to].

Sworn, &c.

No. 22. Certificate of Chief Clerk as to Debts and Claims. [Rule 28, *ante*, p. 421.]

In the matter, &c.

In pursuance of the directions given to me by the Master of the Rolls [*or* Vice-Chancellor], I hereby certify that the result of the adjudication upon debts and claims against the above-named company, brought in pursuant to the advertisement issued in that behalf, dated the day of 18 , so far as such adjudication has up to the date of this certificate been proceeded with, is as follows:—

The debts and claims which have been allowed are set forth in the first Schedule hereto, and, with the interest thereon and costs mentioned in the said Schedule, are due to the persons therein named, and amount altogether to £ .

I have in the first part of the said Schedule set forth such of the said debts and claims as carry interest, and the interest thereon has been computed after the rate they respectively carry down to the date of this certificate.

I have in the second part of the said Schedule set forth such of the said debts and claims as do not carry interest, and the interest thereon has been computed at the rate of £4 per cent. per annum, from the day of 18 , being the date of the said order to wind up the company, down to the date of this certificate.

The claims set forth in the second Schedule hereto have been brought in by the persons therein named, and have been disallowed.

The evidence produced, &c.

THE FIRST SCHEDULE ABOVE REFERRED TO.

First Part.—Debts and Claims which carry Interest.

No.	Names of Creditors.	Addresses and Descriptions.	Particulars of Debt.	Total due.
1	J. L.	29 Street, London, Stationer.	On Bill of Exchange, dated, &c.	£ s. d.
		Principal	£	
		Interest at £ per cent. per annum (less property Tax), from 18 , to the date of this Certificate.. ..	£	
		Costs of Proof ..	£	
			Total first Part.. £	

Second Part.—Debts and Claims which do not carry Interest.

No.	Names of Creditors.	Addresses and Descriptions.	Particulars of Debt.	Interest on Principal (less Property Tax).	Total due.
				£ s. d.	£ s. d.
40	W. P.	15 Street, London, Coal Merchant	Goods sold		
		Principal	£50 0 0	2 0 0	54 0 0
		Costs of Proof ..	2 0 0		
			Totals.. £		
		Add	Total first	Part..... £	
		Total first	and second	Parts .... £	

THE SECOND SCHEDULE ABOVE REFERRED TO.

No.	Names of Creditors.	Addresses and Descriptions.	Particulars of Claim.	Amount claimed.
				£ s. d.

Dated this day of 18 .

G. H., Chief Clerk.

Approved the day of 18 .

No. 23. Notice to Creditor to attend to receive Debt.
[Rule 28, *ante*, p. 421.]

In the matter, &c.

Sir,

Upon application at my office, No. , Street, Middlesex, on or after the instant, between the hours of ten and four o'clock, you may receive a cheque for the amount of your debt, allowed in this matter as under :—

Principal .. .. £
Interest .. .. £
Costs of Proof .. .. .. £

Total £

If you cannot attend personally, the cheque will be delivered to your order, upon your filling up and signing the subjoined form.

The bills or securities (if any) held by you must be produced at the time of such application.

Dated this day of 18 .

I am, &c.,
R. P. H., official liquidator.

To Mr. S. T.

[*Form of order.*]

Sir,

Please to deliver to W. R. the cheque for £ referred to in the above letter as payable to me.

S. T.,
Creditor.

To Mr. R. P. H., official liquidator of the company.

No. 24. Affidavit in Support of List of Contributories.

[Rule 29, *ante*, p. 421.]

In Chancery.

In the matter, &c.

I, R. P. H., of &c., the official liquidator of the above-named company, make oath and say as follows:—

1. The paper writing now produced and shown to me, and marked with the letter A, contains a list of the contributories of the said company, made out by me from the books and papers of the said company, together with their respective addresses, and the number of shares [*or* extent of interest] to be attributed to each; and such list is, to the best of my knowledge, information and belief, a true and accurate list of the contributories of the said company, so far as I have been able to make out and ascertain the same.

2. I have, in the first part of the said list marked A, distinguished the persons who are contributories in their own right.

3. I have, in the second part of the said list marked A, distinguished the persons who are contributories as being representatives of, or being liable to the debts of, others.

Sworn, &c.

No. 25. List of Contributories referred to in Form No. 24.

A.

In the matter, &c.

This list of contributories, marked A, was produced and shown to R. P. H., and is the same list of contributories as is referred to in his affidavit.

Sworn before me this day of 18 .

W. B., &c.

First Part.—Contributories in their own Right.

Serial No.	Name.	Address.	Description.	In what Character included.	No. of Shares [*or* extent of Interest].

Second Part.—Contributories as being Representatives of, or liable to the Debts of, others.

Serial No.	Name.	Address.	Description.	In what Character included.	No. of Shares [*or* extent of Interest].

No. 26. Notice to Contributories of Appointment to settle List of Contributories. [Rule 30, *ante*, p. 422.]

In the matter, &c.

The Master of the Rolls [*or* Vice-Chancellor], has appointed the day of 18 , at of the clock in the noon, at his chambers, in the Rolls Yard, Chancery Lane [*or* at No. Lincoln's Inn], in the county of Middlesex, to settle the list of the contributories of the above-named company, made out and left at the chambers of the said judge by the official liquidator of the said company, and you are included in such list in the character, and for the number of shares [*or* extent of interest] stated below; and if no sufficient cause is shown by you to the contrary at the time and place aforesaid, the list will be settled by the said judge, including you therein.

Dated this day of 18 .

R. P. H., official liquidator.

To Mr. A. B. [and to Mr. C. D., his solicitor.]

No. on List.	Name.	Address.	Description.	In what Character included.	No. of Shares [*or* extent of Interest].

No. 27. Affidavit of Service of Notice. [Rule 30, *ante*, p. 422.]

In Chancery.

In the matter, &c.

I, W. S., of &c., clerk to Messrs. C. and D., of &c., the solicitors of the official liquidator of the above-named company, make oath and say as follows:—

1. The first six columns of the schedule now produced and shown to me, and marked with the letter A, contain a true copy of the list of contributories of the said company, made out and left at the chambers of the Master of the Rolls [*or* Vice-Chancellor] by the said official liquidator, on the day of 18 , and now on the file of proceedings of the said company, as I know from having on the day of 18 , examined and compared the said schedule with the said list; and I have, in the seventh column of the said schedule marked A, set forth the names and addresses of the solicitors who have entered appearances for any of the contributories named in the said list.

2. I did on the day of 18 , in the manner hereinafter mentioned, serve a true copy of the notice now produced and shown to me, and marked B, upon each of the respective persons whose names, addresses and descriptions appear in the second, third and fourth columns of the said schedule marked A, except that in the tabular form at the foot of such copies respectively I inserted the number on the list, name, address, description, in what character included, and number of shares [*or* extent of interest] of the person on whom such copy of the said notice was served, in the

same words and figures as the same particulars are set forth in the said schedule marked A.

3. I served the said respective copies of the said notice by putting such copies respectively, duly addressed to such persons respectively or their solicitors, according to their respective names and addresses appearing in the said schedule marked A, and with the proper postage-stamps affixed thereto as prepaid letters, into the post-office receiving-house, No. in Street, in the county of , between the hours of and of the clock in the noon of the said day of .

Sworn, &c.

No. 28. The Schedule referred to in Form No. 27.

A.

In the matter, &c.

This schedule marked A was produced and shown to W. S., and is the same schedule as is referred to in his affidavit sworn before me this day of 18 .

W. B., &c.

1. Number on List.	2. Name.	3. Address.	4. Description.	5. In what Character included.	6. Number of Shares [*or* extent of Interest].	7. Names and Addresses of Solicitors who have entered appearances, and been served with a copy of the notice referred to in the affidavit of W. S., to which this Schedule is an exhibit.

No. 29. Supplemental List of Contributories, and Affidavit in Support. [Rule 29, *ante*, p. 421.]

In Chancery.

In the matter, &c.

I, R. P. H., of &c., the official liquidator of the above-named company, make oath and say as follows:—

1. Since leaving at the chambers of the judge the list of the contributories in this matter, on the day of 18 , it has come to my knowledge that the several persons whose names are set forth in the supplemental list of contributories now produced and shown to me, and marked with the letter B, are or have been holders of shares in [*or* members of] the said company, and to the best of my judgment, information and belief, such persons are contributories of the said company.

2. The said supplemental list marked B contains the names of such persons, together with their respective addresses and the number of shares [*or* extent of interest] to be attributed to each; and such list is, to the best of my knowledge, information and belief, true and accurate.

3. I have, in the first part of the said list marked B, distinguished such of the said persons as are contributories in their own right.

4. I have, in the second part of the said list marked B, distinguished such of the said persons as are contributories as being representatives of or being liable to the debts of others.

Sworn, &c.

No. 30. Supplemental List of Contributories referred to in Form No. 29.

B.

In the matter, &c.

This supplemental list of contributories marked B was produced and shown to R. P. H., and is the same supplemental list of contributories as is referred to in his affidavit, sworn before me this day of 18 .

W. B., &c.

NOTE.—*The supplemental list is to be made out in the same form as the original list, Form No. 25.*

No. 31. Certificate of Chief Clerk of Settlement of the List of Contributories. [Rule 31, *ante*, p. 422.]

In the matter, &c.

In pursuance of the directions given to me by the Master of the Rolls [*or* Vice-Chancellor], I hereby certify that the result of the settlement of the list of contributories of the above-named company, made out and left at the chambers of the said judge by the official liquidator of the said company on the day of 18 , pursuant to the above statute and the general order of this court in that behalf, so far as the said list has been settled up to the date of this certificate, is as follows:—

1. The several persons whose names are set forth in the second column of the first schedule hereto have been included in the said list of contributories as contributories of the said company in respect of the number of shares [*or* extent of interest] set opposite the names of such contributories respectively in the said schedule.

I have, in the first part of the said schedule, distinguished such of the said several persons included in the said list as are contributories in their own right.

I have, in the second part of the said schedule, distinguished such of the said several persons included in the said list as are contributories as being representatives of or being liable to the debts of others.

2. The several persons whose names are set forth in the second column of the second schedule hereto have been excluded from the said list of contributories.

3. I have, in the seventh column of the said first and second schedules, set forth, opposite the name of each of the said several persons respectively, the date when such person was included in or excluded from the said list of contributories.

The evidence produced, &c.

THE FIRST SCHEDULE ABOVE REFERRED TO.

First Part.—Contributories in their own Right.

Serial No. in List.	Name.	Address.	Description.	In what Character included.	No. of Shares [*or* extent of Interest].	Date when included in the List.

Second Part.—Contributories as being Representatives of, or liable to the Debts of, others.

Serial No. in List.	Name.	Address.	Description.	In what Character included.	No. of Shares [*or* extent of Interest].	Date when included in the List.

THE SECOND SCHEDULE ABOVE REFERRED TO.

Serial No. in List.	Name.	Address.	Description.	In what Character proposed to be included.	No. of Shares [*or* extent of Interest].	Date when excluded from the List.

Dated this day of 18 .

G. H., Chief Clerk.

Approved the day of 18 .

No. 32. Order on Application to vary List. [Rule 29, *ante*, p. 421.]

Master of the Rolls [*or* Vice-Chancellor] at Chambers. } day the day of 18 .
In the matter, &c.

Upon the application of W. N. to review the list of contributories of the said company, in respect of the inclusion of the said W. N. therein, and

that his name may be excluded therefrom, and upon hearing counsel, &c., and upon reading, &c.: It is ordered, that the name of the said W. N. be excluded from the said list of contributories [*or* the judge doth not think fit to make any order on the said application, except that the said W. N. do pay to R. P. H., the official liquidator of the said company, his costs of this application, to be taxed by the taxing master in case the parties differ].

No. 33. Affidavit of Official Liquidator in support of Proposal for Call. [Rule 33, *ante*, p. 424.]

In Chancery.

In the matter, &c.

I, R. P. H., of &c., the official liquidator of the above-named company, make oath and say as follows:—

1. I have, in the schedule now produced and shown to me, and marked with the letter A, set forth a statement, showing the amount due in respect of the debts allowed against the said company, and the estimated amount of the costs, charges and expenses of and incidental to the winding-up the affairs thereof, and which several amounts form in the aggregate the sum of £ or thereabouts.

2. I have also in the said schedule set forth a statement of the assets in hand belonging to the said company, amounting to the sum of £ and no more. There are no other assets belonging to the said company, except the amounts due from certain of the contributories of the said company, and, to the best of my information and belief, it will be impossible to realize in respect of the said amounts more than the sum of £ or thereabouts.

3. It appears by the chief clerk's certificate, dated the day of 18 , that persons have been settled on the list of contributories of the said company, in respect of the total number of shares.

4. For the purpose of satisfying the several debts and liabilities of the said company, and of paying the costs, charges and expenses of and incidental to the winding-up the affairs thereof, I believe the sum of £ will be required, in addition to the amount of the assets of the said company mentioned in the said schedule A, and the said sum of £ .

5. In order to provide the said sum of £ , it is necessary to make a call upon the several persons who have been settled on the list of contributories as before mentioned, and having regard to the probability that some of such contributories will partly or wholly fail to pay the amount of such call, I believe that for the purpose of realizing the amount required as before mentioned, it is necessary that a call of £ per share should be made.

Sworn, &c.

No. 34. Summons for intended Call. [Rule 33, *ante*, p. 424.]

In the matter, &c.

Let all parties concerned attend at my chambers in the Rolls Yard, Chancery Lane [*or* at No. , Lincoln's Inn], in the county of Middlesex, on day, the day of 18 , at of the clock in the noon, on the hearing of an application on the part of the official liquidator of the above-named company, that a call to the amount

of £ per share may be made on all the contributories [*or, if upon any particular class, specify the same*] of the said company.

John Romilly, Master of the Rolls,
or
X. Y., Vice-Chancellor.

This summons was taken out by A. and B. of , in the county of , solicitors for the said official liquidator.

To Mr. A. B., of &c., a contributory of the said company proposed to be included in the said call.

No. 35. Advertisement of intended Call. [Rule 33, *ante*, p. 424.]

In the matter, &c.

By direction of the Master of the Rolls [*or* Vice-Chancellor], notice is hereby given, that the said judge has appointed the day of 18 , at o'clock in the noon, at his chambers in the Rolls Yard, &c., to make a call on all the contributories of the said company [*or as the case may be*], and that the official liquidator of the said company proposes that such call shall be for £ per share. All persons interested are entitled to attend at such day, hour and place, to offer objections to such call.

Dated this day of 18 .

G. H., Chief Clerk.

No. 36. General Order for a Call. [Rule 34, *ante*, p. 424.]

Master of the Rolls [*or* Vice-Chancellor] at Chambers. } the day of 18 . In the matter, &c.

Upon the application of the official liquidator of the above-named company, and upon reading two orders, dated the day of 18 , and the day of 18 , the chief clerk's certificate, dated the day of 18 , an affidavit of the said official liquidator, filed 18 , and the exhibit marked A, therein referred to, and an affidavit of filed 18 : It is ordered, that a call of pounds per share be made on all the contributories of the said company [*or as the case may be*]. And it is ordered, that each such contributory do, on or before the day of 18 , pay into the Bank of England to the account of the official liquidator of the company, the amount which will be due from him or her in respect of such call.

No. 37. Notice to be served with the General Order for a Call. [Rule 34, *ante*, p. 424.]

In the matter, &c.

The amount due from you, A. B., in respect of the call made by the above [*or* within] order is the sum of £ which sum is to be paid by you into the Bank of England, to the account mentioned in the said order. You can pay the same in person, or through a banker or other agent; but this notice and copy order must be produced at the bank upon such payment, and the cashier of the bank will, upon receiving the same, deliver to

you a certificate of the payment in, numbered , signed by the said cashier. In order to prevent proceedings being taken against you for non-payment, you must, immediately upon such payment in, cause written notice of the payment, and of the date thereof, to be given to me as the official liquidator of the said company, at my office, No. , Street, in the county of Middlesex.

Dated this day of 18 .

R. P. H., Official Liquidator.

To Mr. A. B.

No. 38. Affidavit in support of Application for Order for Payment of Call due from Contributories. [Rule 35, *ante*, p. 424.]

In Chancery.

In the matter, &c.

I, R. P. H., of &c., the official liquidator of the above-named company, make oath and say as follows:—

1. None of the contributories of the said company whose names are set forth in the schedule hereunto annexed, marked A, have paid, or caused to be paid, the respective sums set opposite their respective names in the said schedule, and which sums are the respective amounts now due from them respectively in respect of the call of £ per share in pursuance of the order of the judge in that behalf, dated the day of 18 .

2. The respective amounts or sums set opposite the names of such contributories respectively in such schedule are the true amounts due and owing by such contributories respectively in respect of the said call.

Sworn, &c.

A.

THE SCHEDULE ABOVE REFERRED TO.

No. on List.	Name.	Address.	Description.	In what Character included.	Amount due.
					£ s. d.

NOTE.—*In addition to the above affidavit, an affidavit of the service of the order and notice* (*Nos.* 36 *and* 37), *will be required.*

No. 39. Order for Payment of Call due from a Contributory. [Rule 35, *ante*, p. 424.]

The Master of the Rolls [*or* Vice-Chancellor] at chambers. } day, the day of 18 . In the matter, &c.

Upon the application of the official liquidator of the above-named company, and upon reading the order, dated the day of 18 , an affidavit of filed the day of 18 , and an affidavit of the

said official liquidator, filed the day of 18 : It is ordered, that C. D., of &c. [*or* E. F., of &c , the legal personal representative of L. M., late of, &c., deceased], one of the contributories of the said company [*or if against several contributories*, the several persons named in the second column of the schedule to this order being respectively contributories of the said company], do, on or before the day of 18 , or within four days after service of this order, pay into the Bank of England to the account of the official liquidator of the company [*or* to A. B., the official liquidator of the said company, at his office, No. , Street, in the county of Middlesex], the sum of £ [*if against a legal personal representative add*, out of the assets of the said L. M., deceased, in his hands as such legal personal representative as aforesaid to be administered in a due course of administration, if the said E. F. has in his hands so much to be administered; *or, if against several contributories*, the several sums of money set opposite to their respective names in the sixth column of the said schedule hereto], such sum [*or* sums] being the amount [*or* amounts] due from the said C. D. [*or* L. M. *or* the said several persons respectively] in respect of the call of £ per share made by the said order dated the day of 18 .

THE SCHEDULE REFERRED TO IN THE FOREGOING ORDER.

No. on List.	Name.	Address.	Description.	In what Character included.	Amount due.
					£ s. d.

NOTE.—*The copy for service of the above order must be endorsed, as required by the 23rd Consolidated Order, rule* 10.

No. 40. Notice to be endorsed on or served with every Order directing Payment of Money into the Bank of England. [Rule 39, *ante*, p. 425.]

You can make the payment directed by the within [*or* above] order at the Bank of England in person, &c. [*as in the Form No.* 37.]

R. P. H., official liquidator.

To Mr.

No. 41. Certificate of Payment of Money into the Bank of England. [Rule 39, *ante*, p. 425.]

In the matter, &c.

No.

day of 18 .

I hereby certify that C. D., of &c., has this day paid into the Bank of England the sum of £ , to be placed to the credit of the official liquidator of the company, pursuant to an order dated the day of 18 .

For the Governor and Company of the Bank of England,

H. M.,

£ . Cashier.

No. 42. Affidavit of Service of Order for Payment of Call. [Rule 35, *ante*, p. 424.]

In Chancery.

In the matter, &c.

I, J. B., of &c., make oath and say as follows:—

1. I did, on the day of 18 , personally serve G. F., of in the county of &c., with an order made in this matter by his Honor the Master of the Rolls [*or* Vice-Chancellor], dated the day of 18 , whereby it was ordered [*set out the order in the past tense*] by delivering to and leaving with the said G. F. at in the county of a true copy of the said order, and at the same time producing and showing unto him, the said G. F., the said original order duly entered.

2. There was endorsed on the said copy, when so served, the following words; that is to say, "If you, the within-named G. F., neglect to obey this order by the time therein limited, you will be liable to be arrested under a writ of attachment issued out of the High Court of Chancery, or by the serjeant-at-arms attending the same court, and also be liable to have your estate sequestered for the purpose of compelling you to obey the same order."

Sworn, &c.

No. 43. Affidavit of Non-payment of Money by Order directed to be paid into the Bank of England. [Rule 40, *ante*, p. 425.]

In Chancery.

In the matter, &c.

I, R. P. H., of &c., the official liquidator of the above-named company, make oath, and say as follows:—

1. G. F., the person named in an order made in this matter by his Honor the Master of the Rolls [*or* Vice-Chancellor], dated the day of 18 , has not paid into the Bank of England, to the account of the official liquidator of the company the whole or any part of the sum of £ as by the said order directed.

[*Or in case of several parties:*]

1. None of the several persons whose names and addresses are set forth in the schedule hereunder written, and who have respectively been duly served with orders made in this matter by his Honor the Master of the Rolls [*or* Vice-Chancellor], of the respective dates set opposite to their respective names in the said schedule, have paid into the Bank of England, to the account of the official liquidator of the company, the whole or any part of the several sums of money set opposite to their respective names in the said schedule hereunder written, as by the said orders respectively directed.

2. I am enabled to depose to such non-payment, by reason of my having this day ascertained, by inquiry at the said bank, that such payment [*or* payments] has [*or* have] not been made, and seen the certificate of payment in, numbered [*or* several certificates of payment in, the numbers whereof respectively are set forth in the sixth column of the said schedule, opposite the names of the said respective persons, being certificates], furnished by me to the cashier of the said bank for delivery to the said G. F. [*or* several persons respectively] upon such payment [*or* payments] being

made, still in the hands of the cashier of the said bank. No notice [*or* notices] of such payment [*or* payments] having been made has [*or* have] been given to me by the said G. F. [*or* several persons respectively].

Sworn, &c.

THE SCHEDULE ABOVE REFERRED TO.

Name.	Address.	Description.	Amount.	Date of Balance Order.	Number of Certificate.
			£ s. d.		

No. 44. Request to invest Cash in Government Stock or Exchequer Bills. [Rule 43, *ante*, p. 426.]

In the matter, &c.

To the Governor and Company of the Bank of England.

Gentlemen,

It appearing that the sum of £ cash is standing to the credit of the account of the official liquidator of the above-named company, you are hereby requested to invest the sum of £ part thereof, in the purchase of Bank £3 per Cent. Annuities [*or* Reduced £3 per Cent. Annuities, *or* New £3 per Cent. Annuities, *or* New £2 : 10*s.* per Cent. Annuities] in the name of R. P. H., of &c., the official liquidator of the said company [*or* in the purchase of Exchequer Bills, and to deposit such Exchequer Bills in the Bank of England, in the name and on behalf of the said official liquidator]. The said annuities [*or* exchequer bills] are not to be sold, transferred or otherwise dealt with, except upon a direction for that purpose signed by the official liquidator of the said company, and countersigned by the chief clerk of the Master of the Rolls [*or* Vice-Chancellor], or under an order to be made by the said judge.

Dated this day of 18 .

I am, Gentlemen,

Your most obedient servant,

R. P. H., official liquidator.

Countersigned,

G. H., Chief Clerk of the Master of the Rolls [*or* Vice-Chancellor].

No. 45. Notice [or Advertisement] of Meeting of Creditors or Contributories. [Rules 45, 46, *ante*, p. 427.]

In the matter, &c.

Notice is hereby given that the Master of the Rolls [*or* Vice-Chancellor], has directed a meeting of the creditors [*or* contributories] of the above-named company to be summoned pursuant to the above statute, for the purpose of ascertaining their wishes as to [*state the object for which*

meeting called, unless notice is by advertisement, in which case say, certain matters relating to the winding-up of the said company], and that such meeting will be held on day, the day of 18 , at o'clock in the noon, at in the county of , at which time and place all the creditors [*or* contributories] of the said company are requested to attend. [The said judge has appointed H. T., of &c., to act as chairman of such meeting.]

Dated this day of 18 .

R. P. H., official liquidator.

No. 46. Appointment of Proxy to vote at Meeting of Creditors or Contributories. [Rule 46, *ante*, p. 427.]

In the matter, &c.

I, W. S., of in the county of being a creditor [*or* contributory] of the above-named company, hereby appoint of as my proxy to vote for me, and on my behalf, at the meeting of the creditors [*or* contributories] of the said company, summoned by direction of the Master of the Rolls [*or* Vice-Chancellor], to be held on the day of and at any adjournment thereof.

As witness my hand this day of 18 .

W. S.

Signed by the said W. S. in the presence of J. M., of &c.

No. 47. Memorandum of Appointment of a Person to act as Chairman at Meeting of Creditors or Contributories. [Rule 47, *ante*, p. 428.]

In the matter, &c.

The Master of the Rolls [*or* Vice-Chancellor] has appointed Mr. H. T., of &c., one of the creditors [*or* contributories] of the above-named company, to act as chairman of a meeting of the creditors [*or* contributories] of the said company, summoned by direction of the said judge, pursuant to the above statute, to be held on day, the day of 18 , at o'clock, in the noon, at in the county of and to report the result of such meeting to the said judge.

The said meeting is summoned for the purpose of ascertaining the wishes of the creditors [*or* contributories] of the said company as to [*state the object for which meeting called*]; and at such meeting the votes of the creditors [*or* contributories] may be given either personally or by proxy.

Dated this day of 18 .

G. H., Chief Clerk.

No. 48. Chairman's Report of Result of Meeting of Creditors or Contributories. [Rules 45, 46, 47, *ante*, pp. 427, 428.]

In the matter, &c.

I, H. T., the person appointed by the Master of the Rolls [*or* Vice-Chancellor] to act as chairman of a meeting of the creditors [*or*

contributories] of the above-named company, summoned by advertisement [*or* notice] dated the day of 18 , and held on the day of 18 , at in the county of do hereby report to the said judge the result of such meeting as follows:—

The said meeting was attended, either personally or by proxy, by creditors to whom debts against the said company have been allowed, amounting in the whole to the value of £ [*or* by contributories, holding in the whole shares in the said company, and entitled respectively, by the regulations of the company, to the number of votes hereinafter mentioned].

The question submitted to the said meeting was, whether the creditors [*or* contributories] of the said company approved of the proposal of the official liquidator of the said company, that, &c. [*as the case may be*] and wished that such proposal should be adopted and carried into effect.

The said meeting was unanimously of opinion that the said proposal should [*or* should not] be adopted and carried into effect. [*Or* The result of the voting upon such question was as follows:

The undermentioned creditors (*or* contributories) voted in favour of the said proposal being adopted and carried into effect:—

Name of Creditor [*or* Contributory].	Address.	Value of Debt [*or* Number of Shares].	Number of Votes conferred on each Contributory by the Regulations of the Company.

The undermentioned creditors (or contributories) voted against the said proposal being adopted and carried into effect:—

Name of Creditor [*or* Contributory].	Address.	Value of Debt [*or* Number of Shares].	Number of Votes conferred on each Contributory by the Regulations of the Company.

Dated this day of 18 .

(Signed) H. T., chairman.

No. 49. Memorandum of Sanction of Judge to accepting Bill of Exchange. [Rule 48, *ante*, p. 428.]

In the matter, &c.

The Master of the Rolls [*or* Vice-Chancellor] has sanctioned the acceptance of this bill of exchange by the official liquidator, on behalf of the said company.

G. H., Chief Clerk.

No. 50. Memorandum of Agreement of Compromise with a Contributory. [Rule 49, *ante*, p. 428.]

In the matter, &c.

Memorandum of agreement entered into this day of 18 , between R. P. H., of &c., the official liquidator of the above-named company of the one part and S. B., of &c., one of the contributories of the said company, of the other part.

Whereas the said S. B. has been settled on the list of contributories of the said company as a contributory in respect of shares of the said company: And whereas, by an order made by the Master of the Rolls [*or* Vice-Chancellor], dated the day of 18 , a call of £ per share was made on all the contributories of the said company, and there is now due from the said S. B. to the said company the sum of £ in respect of the said call: And whereas the said S. B. has proposed to pay to the said official liquidator the sum of £ by way of compromise, and in satisfaction and discharge of the said sum of £ and of all liability whatsoever, as a contributory of the said company: And whereas the official liquidator, having investigated the affairs of the said S. B., and believing that such compromise will be beneficial to the said company, hath, in exercise of the power for that purpose given to him by the above statute, agreed to accept the same, subject to the sanction of the said judge and to the conditions and agreements hereinafter contained: Now it is hereby agreed by and between the said parties hereto:

1st. That the said official liquidator shall, before the day of next, apply to the said judge at chambers to sanction this agreement of compromise.

2nd. That upon this agreement being sanctioned by the said judge, the said S. B. shall, within days next after such sanction, pay to the said official liquidator the said sum of £ and when thereto required shall do and execute all such acts and deeds as may be necessary for transferring, or surrendering and releasing to the said official liquidator on behalf of the said company, or in such manner as the said judge may direct, the said shares held by the said S. B. in the said company, and all claim and demand whatsoever which the said S. B. has, or may have, against the said company in respect of the said shares, or the distribution of the assets of the said company, or otherwise howsoever.

3rd. That the said sum of £ and the transfer or surrender and release of the said shares and interest of the said S. B., as aforesaid, shall be accepted by the said official liquidator as, and be deemed and taken to give to the said S. B. a full and complete discharge from all calls and liabilities, claims and demands whatsoever, which the said company, or the official liquidator thereof now has or may hereafter have or be entitled to against the said S. B., in respect of his being or having been the holder of the said shares, or otherwise, as a contributory of the said company.

4th. That in case this agreement shall not be sanctioned by the said judge it shall cease and determine, and the said official liquidator and the said S. B. shall be remitted to their original rights with respect to each other, as if this agreement had not been entered into.

5th. That in case this agreement shall be sanctioned by the said judge, and the said S. B. shall not in all respects perform the same on his part, the official liquidator shall be at liberty, with the sanction of the said judge, and without notice to the said S. B., to enforce the performance thereof, or, with the like sanction, to give notice to the said S. B. that he abandons this agreement; whereupon the same shall cease and determine, and the said official liquidator shall be entitled to proceed against the said S. B. to en-

force payment of the said sum of £ or so much thereof as shall then remain due and unpaid, as if this agreement had not been entered into.

R. P. H., official liquidator.
S. B.

Witness to the signatures of the said R. P. H. and S. B.
C. D., of &c.

No. 51. Memorandum of Sanction of Judge to Agreement of Compromise. [Rule 49, *ante*, p. 428.]

In the matter, &c.

The Master of the Rolls [*or* Vice-Chancellor] has sanctioned this agreement of compromise.

G. H., Chief Clerk.

No. 52. Order or Memorandum of the Sanction of the Judge for certain Acts to be done by the Official Liquidator. [Rule 50, *ante*, p. 428.]

The Master of the Rolls [*or* Vice-Chancellor] at chambers. day of , 18 .
In the matter, &c.

The Master of the Rolls [*or* Vice-Chancellor] doth hereby sanction [*or* has sanctioned] the following proceedings being taken [*or* acts being done] by the official liquidator of the above-named company, namely [*state the proceedings to be taken or acts to be done, as*] the bringing [*or* instituting] and prosecuting an action at law [*or* suit in equity], in the name and on behalf of the said company, against [*or* defending an action at law *or* suit in equity] brought [*or* instituted] against the said company by K. M., of &c., to recover a debt or sum of £ alleged to be due from [*or* to] the said K. M. to [*or* from] the said company, &c.

G. H., Chief Clerk.

No. 53. Appearance Book. [Rule 62, *ante*, p. 432.]

In the matter, &c.

Appearance Book.

Date when appearance entered.	Party's Name.	Whether Creditor or Contributory.	If he appears in person, his Address for service.	If he appears by a Solicitor, his Solicitor's Name.	Solicitor's Address.	Amount of Debt [*or* Number of Shares].

No. 54. Summons for Persons to attend at Chambers to be examined. [25 & 26 Vict. c. 89, s. 115, *ante*, p. 245.]

In Chancery.

In the matter, &c.

A. B., of &c., and E. F., of &c., are hereby severally summoned to attend at the chambers of the Master of the Rolls [*or* Vice-Chancellor], in the Rolls Yard, Chancery Lane [*or* No. Lincoln's Inn], in the county of Middlesex, on day of 18 , at of the clock in the noon to be examined on the part of the official liquidator [*or* of W. D., of &c.] for the purpose of proceedings directed by the Master of the Rolls [*or* the said Vice-Chancellor], to be taken before me in the above matter. [And the said A. B. is hereby required to bring with him and produce, at the time and place aforesaid, a certain indenture (*describe documents*), and all other books, papers, deeds, writings and other documents in his custody or power in anywise relating to the above-named company.]

Dated this day of 18 .

G. H., Chief Clerk.

This summons was taken out by Messrs. C. & D., of in the county of solicitors for the official liquidator [*or* for the said W. D.].

No. 55. Certificate of the Company being completely wound up, and of the Official Liquidator having passed his final Account. [Rule 66, *ante*, p. 434.]

In the matter, &c.

In pursuance of the directions given to me by the Master of the Rolls [*or* Vice-Chancellor], I hereby certify that R. P. H., the official liquidator of the above-named company, has passed his final account as such official liquidator, and that the balance of £ thereby certified to be due to [*or* from] the said official liquidator has been paid in the manner directed by the order dated the day of 18 , and that the affairs of the said company have been completely wound up.

The evidence produced, &c.

Dated this day of 18 .

G. H., Chief Clerk.

Approved the day of 18 .

No. 56. Order to dissolve the Company. [Rule 66, *ante*, p. 434.]

The Master of the Rolls [*or* Vice-Chancellor] at Chambers. , the day of 18 . In the matter, &c.

Upon the application of the official liquidator of the above-named company, and upon reading an order dated the day of and the Chief Clerk's certificate, dated the day of whereby it appears that

the affairs of the said company have been completely wound up, and that the balance of £ due from [*or* to] the official liquidator, has been paid in manner directed by the said order: It is ordered, that the said company be dissolved, as from this day of 18 , and that the recognizance dated the day of 18 , entered into by the said official liquidator, together with W. B. and T. P., his sureties, be vacated.

WESTBURY, C.
JOHN ROMILLY, M. R.
RICHD. T. KINDERSLEY, V.-C.
JOHN STUART, V.-C.
W. P. WOOD, V.-C.

GENERAL ORDER AND RULES

OF THE

HIGH COURT OF CHANCERY,

To regulate the mode of proceeding under "The Companies Act, 1867." (*Issued by the Lord High Chancellor, Saturday*, 21*st March*, 1868.)

THE Right Honorable HUGH MACCALMONT BARON CAIRNS, Lord High Chancellor of Great Britain, with the advice and consent of the Right Honorable JOHN LORD ROMILLY, Master of the Rolls, the Honorable the Vice-Chancellor Sir JOHN STUART, and the Honorable the Vice-Chancellor Sir RICHARD MALINS, doth hereby, in pursuance and execution of the powers given to him by "The Companies Act, 1867," and of all other powers and authorites enabling him in that behalf, order and direct in manner following:—

PETITIONS FOR WINDING-UP.

Title.

1. Every petition which shall, after this order comes into operation, be presented for the winding-up of any company by the court, or subject to the supervision of the court, and all notices, affidavits and other proceedings under such petition, shall be intituled in the matter of "The Companies Acts, 1862 and 1867," and of the company to which such petition shall relate.

PETITION TO REDUCE CAPITAL.

Title.

2. Every petition for an order confirming a special resolution for reducing the capital of a company, and all notices, affidavits and other proceedings under such petition, shall be intituled in the matter of "The Companies Act, 1867," and of the company in question.

Setting down petition.

3. No such petition as mentioned in the 2nd rule of this order shall be placed in the list of petitions by the secretary of the Lord Chancellor or of the Master of the Rolls, as the case may be, until after the expiration of eight clear days from the

Rule 3.

filing of such certificate as is mentioned in the 14th rule of this order.

List of creditors.

4. When any such petition as last aforesaid has been presented, application may be made, *ex parte* by summons in chambers, to the judge to whose court the petition is attached, for directions as to the proceedings to be taken for settling the list of creditors entitled to object to the proposed reduction, and the judge may thereupon fix the date with reference to which the list of such creditors is to be made out, pursuant to the 13th section of "The Companies Act, 1867;" and may, either at the same time or afterwards, as he shall think fit, give such directions as are mentioned in the 5th and 6th rules of this order. The order upon such summons may be in the form No. 1 in the schedule hereto (1), with such variations as the circumstances of the case may require.

Advertisement.

5. Notice of the presentation of the petition shall be published at such times and in such newspapers as the judge shall direct, so that the first insertion of such notice be made not less than one calendar month before the day of the date fixed as mentioned in the 4th rule of this order. Such notice may be in the form No. 2 in the schedule hereto (1), with such variations as the circumstances of the case may require.

Evidence (2).

6. The company shall, within such time as the judge shall direct, file in the office of the clerks of records and writs an affidavit made by some officer or officers of the company competent to make the same, verifying a list containing the names and addresses of the creditors of the company at the date fixed as mentioned in the 4th rule of this order, and the amounts due to them respectively, and leave the said list and an office copy of such affidavit at the chambers of the judge.

7. The person making such affidavit shall state therein his belief that such list is correct, and that there was not at the date so fixed as aforesaid any debt or claim, which, if that date were the commencement of the winding-up of the company, would be admissible in proof against the company, except the

(1) See *post*, p. 474.

(2) Where it was impossible to comply with the provisions of rules 6 and 9, on account of not knowing who were the holders of debentures payable to bearer, a notice was appended to the usual advertisement that leave had been given to substitute the advertisement for express service; *General Bank for Promotion of Agency and Public Works*, 17 W. R. 304.

debts set forth in such list, and shall state his means of knowledge of the matters deposed to in such affidavit. Such affidavit may be in the form No. 3 in the schedule hereto (1), with such variations as the circumstances of the case may require.

Copies and inspection of lists (2).

8. Copies of such list containing the names and addresses of the creditors, and the total amount due to them, but omitting the amounts due to them respectively or (as the judge shall think fit) complete copies of such list shall be kept at the registered office of the company and at the offices of their solicitors and London agents (if any), and any person desirous of inspecting the same may, at any time during the ordinary hours of business, inspect and take extracts from the same on payment of the sum of 1*s*.

Notice to creditors (3).

9. The company shall, within seven days after the filing of such affidavit, or such further time as the judge may allow, send to each creditor whose name is entered in the said list a notice stating the amount of the proposed reduction of capital, and the amount of the debt for which such creditor is entered in the said list, and the time (such time to be fixed by the judge) within which, if he claims to be a creditor for a larger amount, he must send in his name and address, and the particulars of his debt or claim, and the name and address of his solicitor (if any) to the solicitor of the company; and such notice shall be sent through the post in a pre-paid letter addressed to each creditor at his last known address or place of abode, and may be in the form or to the effect of the form No. 4 set forth in the schedule hereto (4), with such variations as the circumstances of the case may require.

Advertisement.

10. Notice of the list of creditors shall, after the filing of the affidavit mentioned in the 6th of these rules, be published at such times and in such newspapers as the judge shall direct. Every such notice shall state the amount of the proposed reduction of capital, and the places where the aforesaid list of creditors may be inspected, and the time within which creditors of the company who are not entered on the said list, and are desirous of being entered therein, must send in their names

(1) See *post*, p. 474.
(2) Rules 8 and 14 were altered by Order dated the 2nd day of March, 1869, they are printed as altered.
(3) See note (1), *ante*, p. 468.
(4) See *post*, p. 475.

Rule 10.

and addresses, and the particulars of their debts or claims, and the names and addresses of their solicitors (if any) to the solicitor of the company; and such notice may be in the form No. 5 set forth in the said schedule hereto, with such variations as the circumstances of the case may require.

Affidavit as to claims.

11. The company shall, within such time as the judge shall direct, file in the office of the clerks of records and writs an affidavit made by the person to whom the particulars of debts or claims are by such notices as are mentioned in the 9th and 10th rules of this order required to be sent in, stating the result of such notices respectively, and verifying a list containing the names and addresses of the persons (if any) who shall have sent in the particulars of their debts or claims in pursuance of such notices respectively, and the amounts of such debts or claims, and some competent officer or officers of the company shall join in such affidavit, and shall in such list distinguish which (if any) of such debts and claims are wholly or as to any and what part thereof admitted by the company, and which (if any) of such debts and claims are wholly, or as to any and what part thereof, disputed by the company. Such affidavit may be in the form No. 6 in the schedule hereto (1), with such variations as the circumstances of the case may require; and such list, and an office copy of such affidavit, shall, within such time as the judge shall direct, be left at the chambers of the judge.

Time for proving claims.

12. If any debt or claim, the particulars of which are so sent in, shall not be admitted by the company at its full amount, then, and in every such case, unless the company are willing to set apart and appropriate in such manner as the judge shall direct the full amount of such debt or claim, the company shall, if the judge think fit so to direct, send to the creditor a notice

Notice.

that he is required to come in and prove such debt or claim, or such part thereof as is not admitted by the company, by a day to be therein named, being not less than four clear days after such notice, and being the time appointed by the judge for adjudicating upon such debts and claims, and such notice shall be sent in the manner mentioned in the 9th rule of this order, and may be in the form No. 7 in the schedule hereto (2), with such variations as the circumstances of the case may require.

(1) *Post*, p. 476.
(2) *Post*, p. 478.

13. Such creditors as come in to prove their debts or claims in pursuance of any such notice as is mentioned in the 12th of these rules, shall be allowed their costs of proof against the company, and be answerable for costs, in the same manner as in the case of persons coming in to prove debts under a decree in a cause. Costs of proof.

14. The result of the settlement of the list of creditors shall be stated in a certificate by the chief clerk, and such certificate shall state what debts or claims (if any) have been disallowed, and shall distinguish the debts or claims the full amount of which the company are willing to set apart and appropriate, and the debts or claims (if any) the amount of which has been fixed by inquiry and adjudication in manner provided by section 14 of the said act, and the debts or claims (if any) the full amount of which is not admitted by the company, nor such as the company are willing to set apart and appropriate, and the amount of which has not been fixed by inquiry and adjudication as aforesaid; and shall show which of the creditors have consented in writing to the proposed reduction, and the total amount of the debts due to them, and the total amount of the debts or claims, the payment of which has been secured in manner provided by the 14th section (2), and the persons to or by whom the same are due or claimed, but it shall not be necessary to show in such certificate the several amounts of the debts or claims of any persons who have consented in writing to the proposed reduction or the payment of whose debts or claims have been secured as aforesaid. Certificate of debts (1).

15. After the expiration of eight clear days from the filing of such last-mentioned certificate, the petition may be placed in the list of petitions upon a note from the chief clerk to the secretary of the Lord Chancellor or of the Master of the Rolls, as the case may be, stating that the certificate has been filed and become binding. Notification thereof.

16. Before the hearing of the petition, notices stating the day on which the same is appointed to be heard shall be published at such times and in such newspapers as the judge shall direct. Such notices may be in the form No. 8 in the schedule hereto, with such variations as the circumstances of the case may require. Advertisement.

(1) See note (1) *ante*, p. 469. (2) *Ante*, p. 358.

Rule 17.

Appearance of creditors.

17. Any creditor settled on the said list whose debt or claim has not, before the hearing of the petition, been discharged or determined, or been secured in manner provided by the 14th section of the said act, and who has not before the hearing, signed a consent to the proposed reduction of capital, may, if he think fit, upon giving two clear days' notice to the solicitor of the company of his intention so to do, appear at the hearing of the petition and oppose the application.

Costs.

18. Where a creditor who appears at the hearing under the last preceding rule is a creditor the full amount of whose debt or claim is not admitted by the company, and the validity of such debt or claim has not been inquired into and adjudicated upon under section 14 of the said act, the costs of and occasioned by his appearance shall be dealt with as to the court shall seem just, but in all other cases a creditor appearing under the last preceding rule shall be entitled to the costs of such appearance, unless the court shall be of opinion that in the circumstances of the particular case his costs ought not to be allowed.

Further directions.

19. When the petition comes on to be heard, the court may, if it shall so think fit, give such directions as may seem proper with reference to the securing in manner mentioned in section 14 of the said act (1) the payment of the debts or claims of any creditors who do not consent to the proposed reduction; and the further hearing of the petition may, if the court shall think fit, be adjourned for the purpose of allowing any steps to be taken with reference to the securing in manner aforesaid the payment of such debts or claims.

Advertisement of order and minute.

20. Where the court makes an order confirming a reduction, such order shall give directions in what manner, and in what newspapers, and at what times, notice of the registration of the order and of such minute as mentioned in the 15th section of "The Companies Act, 1867," is to be published; and shall fix the date until which the words "and reduced" are to be deemed part of the name of the company as mentioned in the 10th section of the same act (1).

FEES.

Solicitors' fees.

21. Solicitors shall be entitled to charge and be allowed for duties performed under "The Companies Act, 1867," the same fees as they shall for the time being be entitled to charge and

(1) See *ante*, p. 358.

be allowed for the like duties performed under "The Companies Act, 1862," unless the court or judge shall otherwise specially direct.

Fees of court.

22. The same fees of court shall be paid in relation to proceedings in Chancery under "The Companies Act, 1867," as shall for the time being be payable in relation to like proceedings in Chancery under "The Companies Act, 1862," and shall be collected by stamps in manner provided by the general orders of the court (1).

GENERAL DIRECTIONS.

General practice.

23. The general orders and practice of the court, including the course of proceeding and practice in the judges' chambers, shall, in cases not provided for by "The Companies Act, 1867," or these rules, so far as such orders and practice are applicable and not inconsistent with the said act or with these rules, apply to all proceedings in the Court of Chancery under the said act.

Power of judge.

24. The power of the court and of the judge sitting in chambers to enlarge or abridge the time for doing any act or taking any proceeding, to adjourn or review any proceeding, and to give any direction as to the course of proceeding, shall be the same same in proceedings under "The Companies Act, 1867," as in proceedings under the ordinary jurisdiction of the court.

COMMENCEMENT OF ORDER.

25. This order shall take effect and come into operation on the 15th day of April, 1868, and shall apply to all proceedings in Chancery under the said act, whether commenced before or after that day, but every proceeding taken under the said act before that day shall have the same validity as it would have had if this order had not been made.

INTERPRETATION.

26. The general interpretation clause of the Consolidated General Orders shall be deemed to extend and apply to the rules of this order, and this order shall be deemed a genera order of this court.

CAIRNS, C.
ROMILLY, M. R.
JOHN STUART, V.-C.
RICHARD MALINS, V.-C.

(1) See *ante*, p. 435.

THE SCHEDULE.

No. 1. Form of Order. [Rule 4, *ante*, p. 468.]

The Master of the Rolls [*or* Vice-Chancellor Sir at Chambers]. { In the matter of the company, limited and reduced; and in the matter of "The Companies Act, 1867."

Upon the application of the petitioners by summons, dated , and upon hearing the solicitor for the petitioners, and on reading the petition on the day of , preferred unto the Right Honourable the Lord High Chancellor of Great Britain [*or* Master of the Rolls], it is ordered that an inquiry be made what are the debts, claims, and liabilities of or affecting the said company on the day of , 18 , and that notice of the presentation of the said petition be inserted in [*the newspapers*] on the day of and [*other times of insertion*], and that a list of the persons who are creditors of the company on the said day of , and an office copy of the affidavit verifying the same, be left at the chambers of the judge on or before the day of .

No. 2. [See Rule 5, *ante*, p. 468.]

In the matter of the company, limited and reduced; and in the matter of "The Companies Act, 1867."

Notice is hereby given that a petition for confirming a resolution reducing the capital of the above company from £ to £ , was on the day of presented to [the Lord Chancellor, *or* the Master of the Rolls], and is now pending; and that the list of creditors of the company is to be made out as for the day of 18 .

C. and D. of [Agents for A. and B. of], Solicitors to the company.

No. 3. Affidavit verifying List of Creditors. [Rule 7, *ante*, p. 468.]

In chancery.

In the matter of the company, limited and reduced; and in the matter of "The Companies Act, 1867."

I, A. B., of &c., make oath and say as follows:—

1. The paper writing now produced and shown to me, and marked with the letter A. contains a list of the creditors of and persons having claims upon the said company on the day of , 18 [the date fixed by the order in this matter, dated], together with their respective addresses, and the nature and amount of their respective debts or claims, and such list is, to the best of my knowledge, information and belief, a true and accurate list of such creditors and persons having claims on the day aforesaid.

2. To the best of my knowledge and belief there was not, at the date aforesaid, any debt or claim which, if such date were the commencement of the winding-up of the said company, would be admissible in proof against the said company other than and except the debts set forth in the said list. I am enabled to make this statement from facts within my knowledge as the of the said company, and from information derived upon investigation of the affairs, and the books, documents and papers of the said company.

Sworn, &c.

List of Creditors referred to in the last Form.

A.

In the matter, &c.

This list of creditors marked A. was produced and shown to A. B., and is the same list of creditors as is referred to in his affidavit sworn before me this day of , 18 .

X. Y., &c.

Names, Addresses, and Description of the Creditors.	Nature of Debt or Claim.	Amount of Debt or Claim.

No. 4. [See Rule 9, *ante*, p. 469.]

In the matter of the company, limited and reduced; and in the matter of "The Companies Act, 1867."

To Mr.

You are requested to take notice that a petition has been presented to the Court of Chancery to confirm a special resolution of the above company, for reducing its capital to £ , and that in the list of persons admitted by the company to have been on the day of creditors of the company, your name is entered as a creditor [*here state the amount of the debt or nature of the claim*].

If you claim to have been on the last-mentioned day a creditor to a larger amount than is stated above, you must on or before the day of send in the particulars of your claim, and the name and address of your solicitor (if any), to the undersigned at . In default of your so doing, the above entry in the list of creditors will in all the proceedings under the above application to reduce the capital of the company be treated as correct.

Dated this day of , 18 .

A. B.,
Solicitor for the said company.

No. 5. [See Rule 10, *ante*, p. 469.]

In the matter of the company, limited and reduced; and in the matter of "The Companies Act, 1867."

Notice is hereby given, that a petition has been presented to the Court of Chancery for confirming a resolution of the above company, for reducing its capital from £ to £ . A list of the persons admitted to have been creditors of the company on the day of , 18 , may be inspected at the offices of the company at , or at the office of , at any time during usual business hours, on payment of the charge of one shilling.

Any person who claims to have been on the last-mentioned day and still to be a creditor of the company, and who is not entered on the said list and claims to be so entered, must on or before the day of send in his name and address, and the particulars of his claim, and the name and address of his solicitor (if any), to the undersigned, at , or in default thereof he will be precluded from objecting to the proposed reduction of capital.

Dated this day of , 18 .

A. B.,
Solicitor for the said company.

No. 6. [Rule 11, *ante*, p. 470.]

In chancery.

In the matter of the company, limited and reduced; and in the matter of "The Companies Act, 1867."

We, C. D., of &c. [the secretary of the said company], E. F., of &c. [the solicitor of the said company], and A. B., of &c. [the managing director of the said company], severally make oath and say as follows :—

I, the said C. D., for myself, say as follows :—

1. [Rule 9.] I did, on the day of , 18 , in the manner hereinafter mentioned, serve a true copy of the notice now produced and shown to me, and marked B., upon each of the respective persons whose names, addresses, and descriptions appear in the first column of the list of creditors marked A., referred to in the affidavit of filed on the day of , 18 .

2. I served the said respective copies of the said notice by putting such copies respectively duly addressed to such persons respectively, according to their respective names and addresses appearing in the said list (being the last known addresses or places of abode of such persons respectively), and with the proper postage stamps affixed thereto as prepaid letters, into the post office receiving house, No. , in street, in the county of , between the hours of and of the clock in the noon of the said day of .

And I, the said E. F., for myself, say as follows :—

3. [*If notice issued under* Rule 10.] A true copy of the notice now produced and shown to me, and marked C., has appeared in the of the day of , 18 , the of the day of , 18 , &c.

4. [Rule 11.] I have, in the paper writing now produced and shown to me, and marked D., set forth a list of all claims, the particulars of which have been sent in to me pursuant to the said notice B. now produced and shown to me by persons claiming to be creditors of the said company for larger amounts than are stated in the list of creditors marked A., referred to in the affidavit of , filed on the day of , 18 .

5. [*If notice issued under* Rule 10.] I have, in the paper writing now produced and shown to me, marked E., set forth a list of all claims, the particulars of which have been sent in to me pursuant to the notice referred to in the third paragraph of this affidavit by persons claiming to be creditors of the said company on the day of , 18 , not appearing on the said list of creditors marked A., and who claimed to be entered thereon.

And we, C. D. and A. B., for ourselves, say as follows:—

6. [Rule 11.] We have in the first part of the said paper writing, marked D. (now produced and shown to us), and also in the first part of the said paper writing, marked E. (also produced and shown to us), respectively set forth such of the said debts and claims as are admitted by the said company to be due wholly or in part, and how much is admitted to be due, in respect of such of the same debts and claims respectively as are not wholly admitted.

7. [Rule 11.] We have in the second part of each of the said paper writings, marked D. and E., set forth such of the said debts and claims as are wholly disputed by the said company.

8. In the said exhibits D. and E. are distinguished such of the debts, the full amounts whereof are proposed to be set apart and appropriated in such manner as the judge shall direct.

Sworn, &c.

Exhibit D., referred to in the last-mentioned Affidavit.

D.

In the matter, &c.

List of debts and claims of which the particulars have been sent in to , by persons claiming to be creditors of the said company for *larger amounts* than are stated in list of creditors made out by the company.

This paper writing, marked D., was produced and shown to C. D., E. F. and A. B. respectively, and is the same as is referred to in their affidavit sworn before me this day of , 18 .

X. Y., &c.

First Part.

Debts and Claims wholly or partly admitted by the Company.

Names, Addresses, and Descriptions of Creditors.	Particulars of Debt or Claim.	Amount Claimed.	Amount admitted by the Company to be owing to Creditor.	Debts proposed to be set apart and appropriated in full, although disputed.

SECOND PART.

Debts and Claims wholly disputed by the Company.

Names, Addresses, and Descriptions of Claimants.	Particulars of Claim.	Amount Claimed.	Debts proposed to be set apart and appropriated in full although disputed.

Exhibit E., referred to in the last Affidavit.

E.

In the matter, &c.

List of debts and claims of which the particulars have been sent in to Mr. , by persons claiming to be creditors of the company, and to be entered on the list of the creditors made out by the company.

This paper writing, marked E., was produced and shown to C. D., E. F. and A. B. respectively, and is the same as is referred to in their affidavit sworn before me this day of , 18 .

X. Y., &c.

FIRST PART.

[Same as in Exhibit D.]

SECOND PART.

[Same as in Exhibit D.]

NOTE.—The names are to be inserted alphabetically.

No. 7. [See Rule 12, *ante*, p. 470.]

In the matter of the company, limited and reduced; and in the matter of "The Companies Act, 1867."

To Mr. .

You are hereby required to come in and prove the debt claimed by you against the above company, by filing your affidavit and giving notice

thereof to Mr. , the solicitor of the company, on or before the day of next; and you are to attend by your solicitor at the chambers of [the Master of the Rolls, in the Rolls Yard, Chancery Lane, *or* the Vice-Chancellor , at No. , Lincoln's Inn], in the county of Middlesex, on the day of , 18 , at o'clock in the noon, being the time appointed for hearing and adjudicating upon the claim, and produce any securities or documents relating to your claim.

In default of your complying with the above directions, you will [be precluded from objecting to the proposed reduction of the capital of the company], *or* [in all proceedings relative to the proposed reduction of the capital of the company, be treated as a creditor for such amount only as is set against your name in the list of creditors].

Dated this day of , 18 .

A. B.,
Solicitor for the said company.

REGULATION

AS TO THE MODE OF

REMUNERATING OFFICIAL LIQUIDATORS

Adopted by the Master of the Rolls and the Vice-Chancellors, and sanctioned and approved by the Lord Chancellor.

EVERY application by an official liquidator for remuneration must be supported by an affidavit showing the number of hours devoted by him and his clerks respectively to the business of the liquidation.

In fixing the amount of the remuneration, the judge will, subject as hereinafter mentioned, be guided by the following scale:—

LIQUIDATORS.

		Per day of eight hours.
Group A.		
CLASS 1.	Where the assets divisible among the unsecured creditors shall not amount to £500	£ 1
„ 2.	Where they shall amount to £500 and not to 2,000	2
„ 3.	„ „ 2,000 „ 5,000	3
Group B.		
CLASS 4.	„ „ 5,000 „ 10,000	4
„ 5.	„ „ 10,000 „ 50,000	6
Group C.		
CLASS 6.	„ „ 50,000 „ 100,000	8
„ 7.	„ „ 100,000 „ 500,000	10
„ 8.	„ „ 500,000 and over	12

CLERKS.

	First class.	Second class.	Third class.
GROUP A.	2*s.* ..	1*s.* 6*d.* ..	1*s.* per hour.
B.	3*s.* ..	2*s.* 6*d.* ..	1*s.* „
C.	3*s.* 6*d.* ..	2*s.* 6*d.* ..	1*s.* „

If in the special circumstances of any liquidation it shall at any time, or from time to time, appear to the judge that it is proper to place it on a higher or lower class, he will so place it accordingly.

If it shall appear to the judge that in the special circumstances of any liquidation it is proper to add to or deduct from the amount of remuneration provided by the scale, he will make such addition or deduction accordingly.

If during the progress of a liquidation it shall appear to the judge expedient so to do, he will sanction payments to the liquidator on account of his remuneration.

For this purpose the judge will estimate the amount of such remuneration as well as circumstances will admit, and will pay to the liquidator either the whole of such estimated remuneration or such part thereof as to the judge shall seem reasonable (1).

COUNTY COURT ORDER

(1st January, 1868),

Under "The Companies Act, 1867," *and "The Industrial and Provident Societies Act*, 1862."

THE general order, rules and forms of the High Court of Chancery regulating for the time being the mode of proceeding under "The Companies Act, 1862," shall be the orders, rules and forms in all proceedings in the county courts for the winding-up of a society registered under "The Industrial and Provident Societies Act, 1862," or for the winding-up of a company under "The Companies Act, 1867," so far as the same are applicable: provided that, where it shall appear to the court inconvenient that the Bank of England should be the bank used for the purposes mentioned in the order and rules, it shall be competent for the court to name some bank to be used in lieu of the Bank of England.

---

(1) The court will have regard to this regulation in a winding-up commenced previously to May, 1868.

The amount of remuneration is not affected by reason of profit or loss having resulted. *Agra and Masterman's Bank, e.p. Cannan*, 38 L. J., Ch. 165; L. R., 7 Eq. 102.

As to mutual rights of joint liquidators, see *Langham Hotel Co., e.p. Galsworthy*, *ante*, p. 257.

A SCALE OF COSTS AND CHARGES to be paid to Counsel and Attornies under "The Industrial and Provident Societies Act, 1862," *and "The Companies Act,* 1867," *in County Court Proceedings.*

1st January, 1868.

Attornies shall be entitled to charge and be allowed in proceedings under "The Industrial and Provident Societies Act, 1862," and in proceedings transferred to a county court under "The Companies Act, 1867," the same costs and charges as they would be allowed in the Court of Chancery, except that where the amount of the subscribed capital of the society or company shall not exceed 2,000*l.*, they shall be allowed such costs and charges according to the lower scale authorized by the 2nd rule of the 38th Consolidated General Orders of the Court of Chancery.

EXTRACT FROM ORDER of Commissioners of Her Majesty's Treasury Regulating Fees *of County Courts.*

30th December, 1867.

SCHEDULE (B).

Equitable Jurisdiction.

Proceedings under the Industrial and Provident Societies Act, 1862.

	£	*s.*	*d.*
For every petition presented to a court, under section 17 of the above act	1	0	0
For every order for winding-up	2	0	0
For every sitting or adjourned sitting of the court in the matter, after the order for winding-up shall have been made ..	0	15	0
For the taxation of every bill of costs	0	10	0

The Companies Act, 1862.

For every sitting to take evidence	2	0	0

The Companies Act, 1867.

For every sitting before the judge	2	0	0

SCHEDULE (D).

Equitable Jurisdiction.

	Where the Subject-matter of the Suit or Proceeding.	
	Does not exceed 100*l.*	Where it exceeds 100*l.*
High Bailiffs' Fees.	£ *s.* *d.*	£ *s.* *d.*
For calling the cause	0 2 0	0 3 0
For service, within home district, of every summons, petition, notice, or order, not being summonses to jurors—		
If within one mile of court-house	0 2 6	0 5 0
If beyond one mile, then for every additional mile, or part of a mile	0 0 6	0 0 6
For service of every summons, petition, notice, or order in a foreign district	0 5 0	0 7 6
Where service is ordered to be personal, then an additional fee of	0 3 6	0 5 0
For affidavit of service, when required	0 2 0	0 4 0
For the execution of each warrant within home district	0 5 0	0 10 0
With an allowance of mileage, double the amount of the allowance on summonses.		
For execution of each warrant in a foreign district	0 10 0	0 15 0
Keeping possession, for each day the man is actually in possession	0 6 0	0 7 6
3s. 6d. of the above sum is to be paid to the man in possession, and his receipt produced to registrar.		
Superintending sale, whether by auction or private contract, making out account, and paying money into court 2*l.* per cent. on first 50*l.* so paid, and 1*l.* per cent. on all afterwards.		

N.B—Where the amount or value of the subject-matter of the suit or proceeding is not disclosed by the plaint or petition, it shall be taken not to exceed 100*l.*, and the fees charged accordingly. If, however, the judge shall subsequently certify that the amount or value of the subject-matter does exceed 100*l.*, the difference between the fees up to that time taken and those that would have been taken had it exceeded 100*l.*, may then be taken.

THE COMPANIES ACT, 1867.

Registrars' Fees.

	£	s.	d.
For every summons	0	3	0
For every order	0	5	0
For every office copy of order	0	5	0
For every advertisement	1	0	0
For every certificate	0	5	0
For filing every affidavit or statement on affirmation, declaration, or attestation upon honour	0	1	6
For every sitting by the registrar	0	10	0
When the sitting is longer than an hour, then for every additional hour or part thereof	0	7	0

High Bailiffs' Fees.

Same fees for service and execution as in Equitable Matters.

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